



W.P.(MD)No.18631 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2025

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.18631 of 2019

and

W.M.P.(MD)No.14994 of 2019

J.Celin Annabai

... Petitioner

Vs.

1.The District Collector,
Theni District.

2.The Commissioner,
Uthamapalayam Panchayat Union,
Theni District.

3.Puspavalli

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent made in Na.Ka.No. 52429/2009/Oo.Va.12, dated 11.03.2011 and quash the same as it is arbitrary and illegal and in consequence to direct the respondents to appoint the petitioner as Noon Meal Organizer in the Government Kallar Primary School, K.Duraisamipuram in Uthamapalayam Panchayat Union.

For Petitioner : Mr.R.Suriya Narayanan



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For R1, R2 : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.

For R3 : Mr.A.K.Manikkam

ORDER

Under assail is the order dated 11.03.2011 passed by the first respondent appointing the third respondent as Noon Meal Organizer in the Government Kallar Primary School, K.Duraisamipuram in Uthamapalayam Panchayat Union.

2.The case of the petitioner is that she belongs to backward community and permanent resident of K.Duraisamipuram. The first respondent herein, on 30.01.2011, invite applications through newspapers a vacancy for the post of Noon Meal Organizer in Government Kallar Primary School, K.Duraisamipuram in Uthamapalayam Panchayat Union. The said post is earmarked for backward community candidate except Muslim, under communal rotation. She, as qualified candidate, made an application to the said post. She had attended the interview on 25.02.2011. She is the senior and



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qualified backward community candidate for the said job. The third respondent who belonged to SC community has been appointed to the said post vide order dated 26.02.2011 violating the norms as the said post is earmarked for backward community under communal rotation. Hence, she challenged the same by way of writ petition in W.P.(MD)No.2851 of 2011 before this Court. Thereafter, the first respondent realized his mistake and cancelled the appointment order. Challenging the same, the third respondent filed a writ petition in W.P.(MD)No.2699 of 2011 and this Court by an order dated 09.03.2011 set aside the order passed by the first respondent to pass orders afresh, after giving due notice to the petitioner and after hearing the petitioner. By misreading the said order dated 09.03.2011, instead of passing fresh cancellation order, the first respondent passed a fresh order of appointment vide order dated 11.03.2011 appointing the third respondent as Noon Meal Organizer once again and the same is arbitrary and illegal. Hence, the writ petition.

3.The learned counsel appearing for the petitioner would submit that the order of this Court in W.P.(MD)No.2699 of 2011 dated 09.03.2011 was misconstrued and instead of passing fresh cancellation order, the first respondent passed fresh order of appointment appointing

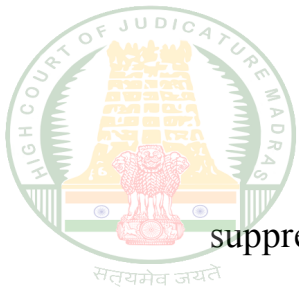


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the third respondent as Noon Meal Organizer once again. He would submit that the order impugned suffers from illegality as the same is earmarked for BC candidate in the communal rotation and the third respondent, who is SC community candidate. Hence, the order impugned suffers non-application of mind.

4.Per contra, the learned Additional Government Pleader appearing for the respondents 1 & 2 would submit that the second respondent has filed a detailed counter in this case. He would submit that the selection committee has considered various aspects as per orders and appointed the third respondent.

5.The learned counsel appearing for the third respondent would submit that the third respondent is concerned, there is no allegations that he has suppressed any material fact in order to get an appointment from the first respondent. He would submit that the third respondent is working more than 14 years and there is no fault on the part of the third respondent. To strengthen his contention, he has relied upon the decision of this Court in W.P.(MD)No.12602 of 2014 dated 13.06.2024 to show that if there is no allegation against the employee that he has



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suppressed any material fact in order to get appointment, the appointment order cannot be cancelled. He has also relied upon the decision of the Division Bench of this Court in W.A.(MD)No.522 of 2018 dated 18.11.2024 and the judgment of Division Bench in W.A.(MD)Nos.925 of 2014 & 1582 of 2016 dated 23.08.2023 to show that when there is no allegation against the employee and has no allegation of suppression of material fact in order to get appointment, then there cannot be challenge of appointment order issued in favour of the employee.

6.This Court has considered the submissions made on either side and perused the available records.

7.It is seen from the counter affidavit filed by the second respondent wherein it has been stated that to fulfil the vacancy for the post of Noon Meal Organizer in Theni District, the District Collector, Theni caused publication of the notification calling for qualified persons to submit their applications to fill up the vacancies in the post of Noon Meal Organizers by fixing the communal rotation on the basis of 200 points roster by taking the District as a unit. It is also stated that Noon Meal Centre, Government Kallar Primary School, K.Duraichampuram



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was reserved for Backward community except Muslim. There are 18

applicants submitted their applications and all of them were appeared for interview. Further, it is stated that on scrutiny of all relevant parameters, the third respondent was selected for appointment as Noon Meal Organizer, vide order dated 26.02.2011. It is relevant to extract paragraph Nos.5 & 7 of the counter filed by the second respondent, as follows:-

5.It is submitted that being aggrieved by the cancellation order, the said Pushpavalli filed a writ petition in WP(MD) No.2618 and 2699 of 2011 before this Hon'ble Court. The Hon'ble Court was pleased to dispose of the petition by directing the 1 Respondent to pass orders afresh, after giving notice to the said Pushpavalli. The Hon'ble Court also made it clear that since the order is set aside, there could be no impediment for the Petitioner to join duty and the respondents are directed to permit her to join duty till the orders are passed in one way or the other. Accordingly, the said Pushpavalli was permitted to join duty vide Proceedings of the 1 Respondent in Roc. 52429/2009/RD 12 dated 11.03.2011 and that she joined duty with effect from the forenoon of 18.02.2011 and for the past 8 years she is working sincerely without any short-fall.

7.It is submitted that the averments of the Petitioner herein in Grounds paragraphs to Tare denied as repetitious and devoid of truth. In fact the Petitioner herein was one



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among 18 candidates who participated in the interview in the year 2011 and the 1 Respondent by considering all relevant parameters prescribed in G.O. Ms. No. 163 Social Welfare and Noon Meal Programme (NMP-2) department dated 18.8.2010 selected and appointed the 3rd Respondent herein. It is an admitted fact that those belonging to Scheduled Caste can participate in the posts reserved for Backward Classes and there is no infirmity in the 1st respondent selecting the 3rd respondent herein to the post of Noon Meal Organizer and that she is serving without any blemish for the past 8 years and the Petitioner herein has no indefeasible legal right to insist that she should be appointed to the post out of 18 candidates who participated in the interview and as such the present petition is liable for dismissal in limine and G.O. Ms. No. 206 Social Welfare and Noon Meal Programme Department dated 04.07.2012 and hence the Petitioner herein cannot maintain the present writ petition which is liable for dismissal.

8.It is seen from the records that the third respondent, who belongs to SC community, has been appointed to the post of Noon Meal Organizer in Government Kallar Primary School, K.Duraisamipuram in Uthamapalayam Panchayat Union, vide order dated 26.02.2011. Challenging the same, the petitioner has preferred a writ petition in W.P. (MD)No.2851 of 2011 and the same was dismissed as withdrawn by an



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order dated 07.06.2019. It is the contention of the petitioner that due to subsequent change in circumstance, that the first respondent has cancelled the appointment order issued in favour of the third respondent, the petitioner withdrawn the said writ petition. A perusal of order impugned shows that the appointment order issued in favour of the third respondent has been cancelled on account of administrative reasons and also citing the order of this Court in W.P.(MD)Nos.2618 and 2699 of 2011 dated 09.03.2011. Thereafter, an appointment order was issued in favour of the third respondent permitting her to join duty.

9.This Court allowed the writ petitions in W.P.(MD)Nos.2618 and 2699 of 2011 vide order dated 09.03.2011 in the following terms:-

9.It is not in dispute that the petitioner was appointed as Noon Meal Organizer at Govt. Kallar Primary School, Ko. Duraisampuram, Uthamapalayam Panchayat Union, Theni District. She has contacted the second respondent to join duty, however, she was not permitted to join duty. Later, the impugned order came to be passed, which is under challenge. By the impugned order dated 28/2/2011, the appointment that has been granted to the petitioner was cancelled. The reason that has been assigned in the impugned order is that on administrative ground, the appointment was cancelled.



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Cancelling the appointment order on administrative ground is unknown to law. However, the learned Special Government Pleader today submitted that the petitioner belongs to Scheduled Caste and the post is meant only for Backward Community. Mistakenly, the petitioner was appointed in the said post and hence, the same was cancelled. Even assuming the said reason is a sound reason to cancel the order of appointment, it does not find place in the impugned order. As stated already, the impugned order stated that on administrative ground, the order of appointment given to the petitioner was cancelled. That apart, even assuming the appointment granted to the petitioner could be cancelled, the same can be done only after giving due notice to the petitioner.

10. In view of the above stated reasons, I am inclined to set aside the impugned order of the first respondent dated 28/2/2011. Accordingly,

(i) The writ petition in W.P. (MD) No.2699 of 2011 stands allowed.

(ii) It is open for the first respondent to pass orders afresh, after giving due notice to the petitioner and after hearing the petitioner.

(iii) Since the impugned order of the first respondent is set aside, there could be no impediment for the petitioner to join duty and the respondents are directed to permit her



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to join duty till the orders are passed afresh in one way or the other.

(iv)No costs.

(v)Consequently, the connected Miscellaneous Petitions are closed.

W.P. (MD) No.2618 of 2011:- In view of the orders passed in W.P (MD) No.2699 of 2011, this writ petition has become infructuous and the same is dismissed. No costs. Consequently, the connected, Miscellaneous Petition is also dismissed.

10.It is seen from the counter affidavit filed by the second respondent that so far as the third respondent is concerned, there is no allegation against her that she suppressed material facts in order to get appointment. It is also stated that there is no impediment to appoint the third respondent, even she belongs to SC community. Generally, in the matter of appointments, the view taken by the Selection Committee cannot be interfered with, because of the simple fact that the persons who are in the Selection Committee are supposed to be the right persons for selecting the eligible candidates for a particular post.



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11. An individual can challenge the selection process on ground of *malafide* or other patent irregularities committed in the selection process.

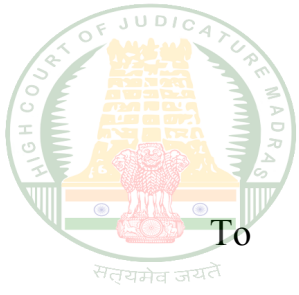
The judicial review of an administrative action will be justified in case of *malafide* (or) procedural irregularities alone. It is not the function of a Court of law, sitting in Writ Jurisdiction to convert itself into a Court of appeal over the decisions of the Selection Committee.

12. In the instant case on hand, it is not explained to the satisfaction of this Court on behalf of the petitioner, with substantiate materials to show that there was a procedural irregularities taken place in the selection process. More over, the third respondent is working more than 14 years. There is no reason to interfere with the order impugned and the writ petition is liable to be dismissed.

13. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes / No
Index : Yes / No
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03.04.2025



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To

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- 1.The District Collector,
Theni District.
- 2.The Commissioner,
Uthamapalayam Panchayat Union,
Theni District.



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M.JOTHIRAMAN, J.

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