
(2007) 10 MAD CK 0142

In the Madras High Court

Case No : Writ Appeal (MD) No. 125 of 2005, W.P. (MD) . No. 2401 and 2478 of 2007 and M.P. (MD) . No's. 1 and 2 of 2007

Aided Primary School

APPELLANT

Vs

District Collector and Commissioner, Panchayat Union

Kalavathi Aided Elementary School and Aided Primary
School Vs The Collector, The P.A. to Collector and The
Commissioner, Panchayat Union

RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Citation : (2008) 1 MLJ 726

Hon'ble Judges : P.R. Shivakumar, J;P.K. Misra, J

Bench : Division Bench

Advocate : V. Panneerselvam, for the Appellant; R. Janakiramalu, Special Government Pleader for Respondent No. 1 in W.A. No. 125/2005 and for Respondent Nos. 1 and 2 in W.P. Nos. 2401 and 2478 of 2007 and K. Bhaskaran, in W.A. No. 125/2005 and for Respondent No. 3 in W.P. Nos. 2401 and 2478 of 2007, for the Respondent

Judgement

P.R. Shivakumar, J.—Since a common issue has arisen in the above said writ appeal as well as the above said two writ petitions, by order

of Court, all the matters stand listed before us for disposal and we consider it convenient to dispose of all the three matters by a common

judgment.

2. The procedure for appointing Noon Meal Organisers for Nutritious Meal centres functioning at Private Aided Schools (Minority/Non-minority)

has been put in issue in all the three cases. According to the appellant in W.A. No. 125/2005 which is also the petitioner in W.P. No. 2478 of

2007 and the petitioner in W.P. No. 2401 of 2007, the choice of selection should be restricted to the panel of five names submitted by the

Correspondent of the School concerned and hence the orders impugned in the writ petitions are liable to be quashed and consequently the

respondents should be directed to select any one of the persons from the panel of names sent by the Management of the School concerned. In this

regard, the Court's attention was drawn to the following G.Os., wherein the procedures for selection and appointment of Noon Meal Organisers

have been incorporated:

(i) G.O.Ms. No. 215, Backward Classes, Welfare, Nutritious Meal Programme and Social Welfare Department, dated 09.12.1988;

(ii) G.O.Ms. No. 918, Backward Classes, Welfare, Nutritious Meal Programme and Social Welfare Department, dated 03.11.1989;

(iii) G.O.Ms. No. 294, Social Welfare & Nutritious Meal Programme (NMP. I) Department, dated 21.10.1993; and

(iii) G.O.Ms. No. 206, Social Welfare & Nutritious Meal Programme (NMP) Department, dated 13.09.1996.

3. According to the procedure prescribed for selection of the candidates, in first cited G.O.Ms. No. 215 dated 09.12.1988, for the post of

Organisers under the Tamil Nadu Government Nutritious Meal Programme, when a vacancy for the post of an Organiser in any Nutritious Meal

Centre arose in a panchayat area, the Deputy Inspector of Schools concerned should intimate the vacancy to the Panchayat Union Commissioner

who in turn would inform the President of the Panchayat. The Panchayat President had to prepare a panel of names of not less than three and not

more than six per vacancy. The same was to be submitted to the Panchayat Union Commissioner after getting the approval of the Panchayat

Board. On receipt of such panel, the Panchayat Union Commissioner would make appointment. In case, no suitable candidate was available in the

panel, a fresh panel had to be prepared. Similar procedure had also been prescribed for the local bodies, like Municipalities and Town

Panchayats.

4. Thereafter in 1989 by the second cited G.O.Ms. No. 918 dated 03.11.1989, a comprehensive procedure was notified for appointment of

Noon Meal Organisers in Nutritious Meal centres functioning in the Panchayat Union areas, Corporation School Centres, Municipal School

Centres and Minority and Non-minority Aided School Centres. We are concerned

with the mode of appointment of Noon Meal Organisers in

respect of Aided School (Minority/Non-minority) Centres and not in respect of other centres. Clause 7(f) of G.O.Ms. No. 918 which deals with

the procedure for appointment of Noon Meal Organisers in the Minority/Non-Minority Aided School Centres reads as follows:

Appointment to the post of Noon Meal Organisers in minority/non-minority aided school centres.

As regard to the procedures to be followed in selection of Nutritious Meal Organisers in Minority/non-minority aided schools are concerned, the

following procedure is prescribed:

(a) For each minority/non-minority school, the Manager, or the Correspondent will send in panel of 5 names to the Collector for appointment as

Nutritious Meal Organisers following the existing conditions of appointment.

(b) In drawing up the panel, the Government policy of giving one job to one family should be kept in mind.

(c) The Collectors shall give approval to any of the names recommended by the Managements of schools and communicate his approval to the

Management of the concerned school and thereafter the Management will issue appointment orders.

5. As per the above said Scheme, the Correspondent of the Aided Minority/Non-Minority School concerned had to prepare a panel of five names

and submit to the Collector for appointment as Noon Meal Organiser. The Collector would approve any one of the names recommended by the

Management and communicate his approval to the Management/Correspondent of the concerned School. Thereafter, the Management would

issue appointment orders. Later on, the power of selection, of course confined to the panel of five names submitted by the Management, was

entrusted to the Personal Assistant (NMP) to the Collector. However, the Correspondent of the concerned School had been conferred with the

power to issue appointment orders to the candidates thus selected by the Personal Assistant (NMP) to the Collector.

6. While so, in W.P. No. 13732/1992, the Madras High Court delivered a judgment to the effect that the Correspondents of the Aided Schools

had no right to claim any right in the administration of the Nutritious Meal Programme as the same was entirely run by the Government and the

entire expenses of the scheme were borne by the Government. In view of the same and in view of the fact that the Government noticed frequent

friction between the Management of the Schools and the Nutritious Meal Organisers causing big hindrance to the smooth functioning of the

scheme, G.O.Ms. No. 294 dated 21.10.1993 was issued modifying the procedure found in paragraph-7(f) Sub-clauses (a) to (c) in G.O.Ms. No.

918 dated 03.11.1989. By such modification, a selection committee consisting of the Personal Assistant (NMP) to the Collector as Chairman and

the Correspondent/Headmaster of the concerned School and the Commissioner of the concerned Panchayat Union as members, was constituted

for appointing Nutritious Meal Organisers in the Minority/Non-minority Aided School Centres. By G.O.Ms. No. 206 dated 13.09.1996, the

procedure for appointment of Nutritious Meal Organisers in the Minority/Non-minority Aided School Centres outlined in para-4 of G.O.Ms. No.

294 is directed to be retained with a modification that the existing selection committee shall make the selection of candidates for appointment of

Nutritious Meal Organisers; that the Personal Assistant (NMP) to the Collector/District Social Welfare Officer as Chairman of the Committee

should submit the connected papers in full shape to the District Collector for his approval and that the appointment order should be issued in the

name of the Collector.

7. While so, the District Collector, Dindigul District issued a communication in his letter dated 05.07.2004 to the appellant in W.A. No. 125/2005

informing that the vacancies in the post of Noon Meal Organisers in the centres attached to Aided Schools (Minority and Non-minority) shall be

filled up by the surplus employees in the Integrated Child Development Scheme as per Government letter No. 159/02/Social Welfare Department

dated 05.11.2002. It was also informed that the Noon Meal Organiser attached to the centre functioning in the appellant's school could not be

appointed out of the list of five persons submitted by the Management. Challenging the said order of the District Collector, Dindigul, the appellant

in W.A. No. 125/2005 had filed the writ petition concerned, namely W.P. No. 4237/2004. The learned Single Judge dismissed the writ petition

holding that paragraph-7(f) Sub-clauses (a) to (c) of G.O.Ms. No. 918 dated 03.11.1989 had been modified by G.O.Ms. No. 294 dated

21.10.1993 by constituting a selection committee for selection of the candidates to be appointed as Noon Meal Organisers and that it was no

longer permissible for the appellant to place reliance on Clauses (a) to (c) of paragraph 7(f) of G.O.Ms. No. 918 dated 03.11.1989. Hence the

appellant is before this Division Bench, questioning the correctness of the order passed by the learned Single Judge.

8. Meanwhile, the District Collector, Dindigul District issued a notification in Na.Ka. No. 742/07/A4 dated 06.03.2007, which is impugned in

W.P. Nos. 2401 and 2478 of 2007, directly calling for the applications for filling up the vacancies of Noon Meal Organisers in the centres

functioning at the Aided Primary School, Malaippatty (petitioner in W.P. No. 2478/2007 and the appellant in W.A. No. 125/2005) and Aided

Elementary School, Kannarpatti (petitioner in W.P. No. 2401/2007). The said notifications have been challenged by the respective

Correspondents of the School in W.P. Nos. 2478 and 2401/2007.

9. The learned Counsel representing the appellant in W.A. No. 125 of 2005/ petitioner in W.P. No. 2478 of 2007 and the petitioner in W.P. No.

2401 of 2007 has advanced an argument as follows:

As per G.O.Ms. No. 918 dated 03.11.1989, a panel of five names would be prepared by the Correspondent of the School and sent to the

District Collector for approval. The District Collector would select one of the names from the panel and give his approval for being appointed as

Noon Meal Organiser of the Centre attached to the school and the Correspondent of the school concerned, on receipt of communication of such

approval, would issue appointment order to such person. Subsequently by virtue of G.O.Ms. No. 294 dated 21.10.1993, the procedure of getting

a panel of five names from the Correspondent of the school to which the Nutritious Meal Centres was attached was kept in tact, but with a

modification that the selection of one of the names from the panel was entrusted to a Committee consisting of the following persons:

(i) Personal Assistant (NMP) to the Collector - Chairman;

(ii) Correspondent/Headmaster of the concerned School - Member; and

(iii) Commissioner of the concerned Panchayat Union - Member.

The power of issuing appointment orders has also been taken away from the Correspondent/Headmaster of the school and the appointment order

was directed to be issued in the name of the Personal Assistant (NMP) to the Collector. In G.O.Ms. No. 206 dated 13.09.1996, further

modification in the manner of issuing appointment orders was made. By such modification, the Personal Assistant (NMP) to the Collector, as

Chairman of the selection committee, has been directed to submit the connected papers in full shape to the District Collector for his approval and

the appointment orders have been directed to be issued in the name of the District Collector.

10. The learned Counsel further submitted that in none of the G.Os. issued subsequent to G.O.Ms. No. 918 dated 03.11.1989, the procedure of

getting a panel of five names from the Aided Minority/Non-minority schools for being considered either by the Personal Assistant (NMP) to the

Collector or by the subsequent committee has been dispensed with and that the only change made by those G.Os. was in respect of the

prescription of the authority to select the candidate for appointment and the authority in whose name the appointment order should be issued.

11. In support of the contention raised on behalf of the appellant and the writ petitioners, the learned Counsel relied on the unreported judgment of

Justice K.P. Sivasubramaniam in ""Packiyathai Middle School, Chinthamani, Puliyangudi, Tirunelveli District v. The District Collector, Tirunelveli

District, Tirunelveli and 2 Ors. W.P. No. 17473 of 1997, wherein it was held that the Personal Assistant to Collector or Collector could not make

any appointment without getting a panel of five names as per Sub-clauses (a) to (c) of paragraph 7(f) of G.O.Ms. No. 918 dated 03.11.1989. The

learned Single Judge, while referring to the above said observation made in the earlier judgment, has observed that the change in the procedure of

appointment of Noon Meal Organisers brought about by virtue of G.O.Ms.294 dated 21.10.1993 constituting a selection committee could not

have been brought to the notice of the Judge in the earlier case and hence dissented from the view expressed by Justice K.P. Sivasubramaniam.

The relevant paragraph of the order of the learned Single Judge runs as follows:

However, the material fact of existence of another G.O. in G.O.Ms. No. 294, Social Welfare and Nutritious Meal Programme (NMP-I)

Department, dated 21.10.1993, has not been brought to the notice of the learned Judge, while passing the order. In the said Government Order,

the earlier G.O.Ms. No. 918, dated 03.11.1989 has been modified by constituting a selection committee consisting of the Personal Assistant

(NMP) to the Collector as Chairman, the Correspondent/Headmaster of the concerned school and the Commissioner of the concerned panchayat

union as members. Hence reliance on Clauses (a) to (c) of paragraph 7(f) of the G.O.Ms. No. 918, dated 03.11.1989, cannot hold good now,

and the prayer as sought for by the petitioner by placing reliance on the clauses of paragraph 7(f) of G.O.Ms. No. 918, dated 03.11.1989, which

has been subsequently modified, cannot be granted.

12. The learned Counsel representing the appellant in W.A. No. 125 of 2005/ petitioner in W.P. No. 2478 of 2007 and the petitioner in W.P. No.

2401/2007 has drawn our attention to the Government letter No. 21126/ NMP2/2003 dated 25.03.2003. In the said Government letter, it has

been clarified that the only modification made in the procedure for appointment of Noon Meal Organisers in the Centres attached to

Minority/Non-Minority Aided Schools was the introduction of a selection committee in the place of Collector/Personal Assistant (NMP) to the

Collector as the authority competent to make selection of the candidate for appointment; that the further modification made by G.O.Ms. No. 206

dated 13.09.1996 was to the effect that the Chairman of the selection committee [Personal Assistant (NMP) to the Collector] should submit the

connected papers regarding selection of candidates made by the committee, in full shape to the District Collector for his approval and the

appointment orders are required to be issued in the name of the Collector and that the said G.O. did not get rid of the requirement of getting a

panel of five names from the Correspondent of the school concerned as envisaged in Sub-clauses (a) to (c) of paragraph 7(f) of G.O.Ms. No. 918

dated 03.11.1989. The relevant paragraph of the Government Letter is extracted here under, for the sake of convenience:

Further there is no scope for difference of opinion between the Management of minority/non-minority aided schools and the appointing authority,

since the management is supposed to sponsor a panel of five eligible candidates and one of the above candidates is appointed by the Collector.

13. After giving due consideration to the submissions made on both sides in this regard, and after perusing the above said Government Letter, we

are of the considered view that the contention made by the learned Counsel appearing for the appellant in W.A. No. 125 of 2005/petitioner in

W.P. No. 2478 of 2007 and the petitioner in W.P. No. 2401 of 2007 has got to be countenanced; that obviously this particular letter of

clarification which has been submitted before us in the form of additional typed-set of papers was not brought to the notice of the learned Single

Judge and that the result would have been different, had it been brought to the notice of the learned Single Judge.

14. In such view of the matter, we come to the conclusion that the Writ Appeal and both the Writ Petitions shall succeed. Accordingly, the Writ

Appeal No. 125 of 2005 and the Writ Petition Nos.2401 and 2478 of 2007 are allowed and the impugned order passed by the third respondent

in Na.Ka. No. 742/07/A4 dated 06.03.2007 is quashed. No costs. Consequently, the connected miscellaneous petitions are closed.