

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06.07.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.558 of 2011 &
M.P.Nos.1 & 2 of 2011

R.Kavitha Petitioner

vs

1.The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Commissioner,
Tiruttani Panchayat Union,
Tiruttani.

3. P.Banumathi Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in Na.Ka.No.37878/09/NMP.1 dated 03.01.2011, quash the same and direct the 1st respondent to appoint the petitioner as Noon Meal Organizer in Netteri Kandigai Panchayat Union Elementary School, Tiruttani Panchayat Union as per the assessment made by the 2nd respondent.

For petitioner : Mr.V.Sudhakaran

For respondents: Mr.R.E.S.Senthil Vel, AGP(R-1)
Mr.J.Rajakalifulla for R2
Mr.S.Ramesh for R3
For Mr.M.A.Gowthaman

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorarified Mandamus, to call for the records of the first respondent in

Na.Ka.No.37878/09/NMP.1 dated 03.01.2011, quash the same and direct the 1st respondent to appoint the petitioner as Noon Meal Organizer in Netteri Kandigai Panchayat Union Elementary School, Tiruttani Panchayat Union as per the assessment made by the 2nd respondent.

2. According to the petitioner, she was aggrieved by the appointment of the 3rd respondent as Noon Meal Organizer vide impugned order dated 3.2.2010 is contrary to G.O.Ms.No.163 Social Welfare Department, dated 18.8.2010.

3. The petitioner is the native of Nettari Kandigai, wherein, Noon Meal Centre is situated and instead of preferring the petitioner, the official respondents have preferred the 3rd respondent and appointed her as Noon Meal Organizer. According to the writ petitioner, she has better qualification than the 3rd respondent and by virtue of her location in the same village, she has to be preferred in the matter of subject appointment. During the pendency of the Writ Petition, it appears that the 3rd respondent has been transferred to a neighbouring Noon Meal Centre on 2.2.2015. According to the learned counsel for the parties, the post in which, the 3rd respondent was originally appointed which gave rise to the Writ Petition, was still lying vacant and the same has not been filled up yet.

4. Mr.V.Sudhakaran, learned counsel appearing for the petitioner would also draw the attention of this Court to the order dated 16.4.2012 passed by the First Bench of this Court in W.A.No.146 of 2012, wherein, it has been held as under in para 23:

"23. Moreover, it is not the for the first time that the Government has stipulated the distance criterion by way of G.O.Ms.No.163 dated 18.08.2010. In fact, the issue has frequently been referred to the Government for necessary clarifications and in G.O.Ms.No.203 Social Welfare and Nutritious Meal Programme (Social Welfare -7) Department dated 19.08.2005, the Government has issued such clarification. In the said Government Order, it has been pointed out that when appointments are made for Noon Meal Centres from a radius of 10 kilometres, much time is lost for the person so appointed to commute between such long distance

and many a times such persons does not turn up for duty, which has been noticed during surprise inspections by the officials. Further, if the person so appointed is not a resident of that village, he / she seeks transfer to a different panchayat / district and such matters are often litigated upto the High Court, which hampers, the effective functioning of such noon meal Centre. Taking into consideration such difficulties faced, the Government issued the following clarifications in the aforesaid G.O.:-

1. Wherever there is vacancy in any Noon Meal Or Anganwadi Centre, eligible persons residing in the same hamlet should be appointed.

2. Where qualified persons are unavailable in the hamlet, eligible persons from other neighbouring hamlets under the same village panchayat should be selected. If even such persons are not available, then qualified persons from other panchayats, not beyond the distance of 10 kilometres surrounding the said panchayat should be selected.

3. As far as Municipalities / Corporations are concerned eligible persons from the same ward where there is vacancy should be selected, and on the unavailability of persons there, eligible persons from the nearby ward should be considered, and if even such persons are not eligible, then persons from the same Division should be selected.

From the above, we are clear in our mind that the Government has tried its utmost to evolve a pragmatic solution while appointing Noon Meal Organisers from places nearer to the Noon Meal Centres and the distance criterion has been rightly fixed taking into account the practical difficulties faced while appointing persons belonging to far off places".

5. In view of the submissions made on behalf of the learned counsel for the petitioner and the learned Addl.Govt.Pleader as well as the learned counsel for the 3rd respondent and upon perusing the pleadings, this Court is of the view that though the impugned order is liable to set aside, however, considering the fact that the 3rd respondent has already been appointed as Noon Meal Organizer as early as in 2014 and thereafter, she has been transferred to another neighbouring place, her appointment need not be disturbed at this distant point of time. Even otherwise, the Administration is not going to be prejudiced in transferring the 3rd respondent to a different Noon Meal Organizer in the same panchayat. Therefore, considering the peculiar facts and circumstances of the case, the first respondent is directed to consider the claim of the petitioner for appointment as Noon Meal Organizer in Netteri Kandigai Panchayat Union Elementary School, Tiruttani Panchayat Union and pass appropriate orders, within a period of two weeks from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected MPs are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Commissioner,
Tiruttani Panchayat Union,
Tiruttani.

+lcc to Government Pleader sr.47259

+lcc to Mr.M.A.Gowthaman,Advocate sr.47130

+lcc to Mr.J.Rajakalifulla,Advocate sr.47200

+lcc to Mr.M.S.Palanisamy,Advocate sr.47001(24/7/2017)

W.P.No.558 of 2011

ss(24/7/2017)