



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.3469 of 2017

and

W.M.P (MD) No.2823 of 2017

H.Maheswari

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Personal Assistant to the District Collector,
(Noon meals),
Thoothukudi District, Thoothukudi.

3.The Block Development Officer/Commissioner,
(Village Panchayat),
Tiruchendur, Thoothukudi District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus, directing the respondents to permit the Petitioner to discharge her duty as Noon Meal Organizer at Panchayat Union Primary School, Valavilai, Tiruchendur Taluk, Thoothukudi District in pursuance to the proceedings made in V9/32668/2015, dated 20.2.2016 issued by the first respondent.

For Petitioner : M/s.D.Sadiq Raja

For Respondents : Mr.S.Sathish Kumar
1 and 2 Addl.Govt.Pleader

For Respondent-3 : Mr.C.Selvaraj
Special Govt.Pleader

O R D E R

This Writ Petition has been filed, seeking a direction to the respondents to permit the Petitioner to discharge her duty as Noon Meal Organizer at Panchayat Union Primary School, Valavilai, Tiruchendur Taluk, Thoothukudi District in pursuance of the proceedings made in V9/32668/2015, dated 20.2.2016 issued by the first respondent.



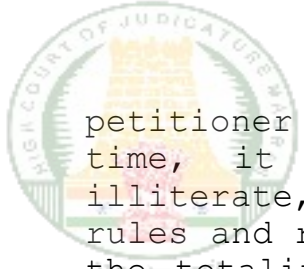
Special Government Pleader takes notice for the third respondent. By consent of both parties, the Writ Petition itself is taken up for final disposal at the admission stage itself.

3. The Petitioner submitted that she has completed +2 and married her relative and out of the said wedlock, two children were born to them and both are mentally retarded and that Doctors have assessed their mental disability. Her husband is no more and that she has applied for the post of Assistant Cook on following due procedure and after participation in the interview, she got selected. Pursuant to the notification issued for the post of Noon Meal Organizer as against the sanctioned vacancy at Thoothukudi, the petitioner made an application and without knowing that prior permission should be obtained from the department and ignoring the fact that she applied for the said post while working in Hindu Primary School, Ranimaharajapuram as Assistant Cook. The Petitioner submitted that she was selected to the said post, but unfortunately, she was not allowed to discharge her duty as Noon Meal Organizer at Panchayat Union Primary School, Valavilai, Tiruchendur Taluk, Thoothukudi District on account of the proceedings of the first respondent, dated 20.2.2016. The Petitioner submitted that the respondents are taking steps to cancel her appointment

4. When this matter came up for admission Mr. M. Sathish Kumar, learned Additional Government Pleader appearing for the respondents 1 and 2 objected to the grant of the prayer sought for by the Petitioner, by producing a written communication dated 27.2.2017, issued by the District Collector's Office to the Liaison Officer of this Court, wherein, it has been stated that the petitioner is already in employment and without taking prior permission, she applied for the said post and she got selected and that the department has taken steps to cancel the appointment order issued to the Petitioner as Noon Meal Organizer. It is also stated that the Petitioner has not submitted any resignation and after getting appointment, the Petitioner had given an anti-dated resignation letter, dated 8.2.2016 and the said letter has been received on 22.2.2016 and that resignation has not been accepted. As on date, the Petitioner is employed as Assistant Cook in Hindu Primary School, Ranimaharajapuram.

5. Heard both sides and perused the materials placed before this Court.

6. It is not in dispute that the Petitioner had applied to the post of Noon Meal Organizer and got selected. The only reason for rejection to allow the Petitioner to join the duty is that she has not obtained prior permission before applying for the said post and that her resignation letter has not been submitted earlier. From the reading of the facts, it is seen that the Petitioner's children are mentally retarded and there is no harm to any person in seeking better employment than the present one. It is true that the



petitioner has violated the service conditions, but at the same time, it is to be remembered that the petitioner being an illiterate, cannot be expected to know about the provisions of the rules and regulations; that the Court will have to take into account the totality of the circumstances and that in such type of case, Justice need to be rendered based on equity. From the communication dated 27.2.2017 sent by the District Collector to the Liaison Officer of this Court, it appears that the department is also contemplating action against the Petitioner, for her failure to obtain prior permission before applying for some other job and the said ignorant omission should not be considered as a serious one and if the Petitioner is otherwise eligible and if there are no other legal impediment, there is nothing wrong on the part of the respondents, to consider the request of the Petitioner to accommodate her in the newly selected post, namely, Noon Meal Organizer and till then she shall not be divested of her duties from the post of Assistant Cook otherwise than for a misconduct. This Court expects that no further hurdles are created to the petitioner in the present employment as Assistant Cook, in Hindu Primary School, Ranimaharajapuram.

7. With the above observation, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

1. The District Collector,
Thoothukudi District, Thoothukudi.
2. The Personal Assistant to the District Collector,
(Noon meals), Thoothukudi District, Thoothukudi.
3. The Block Development Officer/Commissioner,
(Village Panchayat), Tiruchendur, Thoothukudi District.

+1 CC TO MR.D.SADIQ RAJA, ADVOCATE, SR NO.11389
+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. NO.21516
+1cc to Mr.T.CIBI CHAKRABORTHY Advocate in SR. No.21040

vsn
MAS/MR/SAR1:06.06.2017:3P-7C

W.P. (MD) No.3469 of 2017
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