

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 25.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA**W.P (MD) No.17431 of 2016****and****W.M.P (MD) .Nos.12629 to 12631 of 2016**

Sathae

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Principal Secretary
Social Welfare and Noon
Meal Department, Secretariat,
Fort St.George,
Chennai-9.

2.The District Collector,
Trichy District,
Trichy.

3.The Commissioner,
Marungapuri Union,
A.Kallupatti,
Trichy District.

4.The Headmaster,
Panchayat Union Middle School,
Marungapuri Panchayat Union,
Ekkarai Kosikurichi Village and Post,
Trichy District.

5.Nithayakalyani

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned proceedings of the 2nd respondent passed in RC.N6./231/15, dated 26.08.2016 and to quash the same and consequently direct the 2nd respondent herein to pass appropriate orders of issuing posting order to the petitioner as a cooking assistant in the fourth respondent school.



For Petitioner : Mr.A.Saravanan
For R1 to R4 : Mr.D.Muruganantham
Additional Government Pleader
For R5 : No appearance

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O R D E R

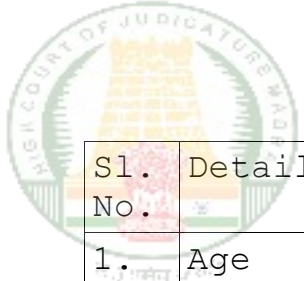
This writ petition is directed against the impugned proceedings, dated 26.08.2016 passed by the second respondent in RC.N6/231/15 to quash the same and to direct the second respondent to pass appropriate orders of issuing posting order to the petitioner as a cooking Assistant in the fourth respondent school

2.Heard Mr.A.Saravanan, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for R1 to R4.

3.By consent of both sides, this writ petition itself is taken up for final disposal.

4.It is the case of the petitioner that she is a widow aged about 37 years, belongs to Most Backward Community. Since her husband died on 20.06.2001, leaving behind the petitioner and one minor daughter and one minor son as his legal heirs and she is finding difficulty to eke her livelihood. However, she has been doing daily coolie work to take care of their minor children. It is stated that she is not having any other source of income, except the little revenue comes from the coolie work. While so, the petitioner pleaded that the second respondent is seeking appointment of Assistant Cook under the scheme of Puratchi Thalaivar MRG Nutritious Meal Programme in the fourth respondent school, enclosing all the educational certificate, Family Card, residence Certificate, income certificate. Thereafter, the third respondent considering her eligibility, issued interview letter on 02.02.2016 in Na.Ka.No.A5/0225/2016, directing her to appear for interview at about 09.00 a.m., on 09.02.2016 in the office of the third respondent. The petitioner also appeared with her certificate and requisite documents to be shown before the third respondent and to satisfy that she is eligible for the post of cooking Assistant in the fourth respondent school. Although the petitioner produced certificate showing that she is a widow and also hailing from the same village viz., Ekkarai Kosikurichi Village, the second respondent has wrongly appointed the fifth respondent. Hence, the present writ petition is filed.

5.A counter affidavit has been filed by the Commissioner Marungapuri Panchayat Union and in paragraph 4 of the counter affidavit shows that a comparative statement drawn by the Services Commission will prove the fact that the petitioner herein has approached this Court with false and untenable prayer, which is given as under:



Sl. No.	Details	Sathayee	Nithiyakalyani
1.	Age	39 years	38 Years
2.	Educational Qualification	5 th Standard	8 th Standard
3.	Community	M.B.C	O.C
4.	Marital Status	Widow (No certificate)	Widow (death certificate enclosed)
5.	Income	No records	No records
6.	Property	Nil-thatched House	Nil-tiled house
7.	Children	2 Children	1 mentally retarded female child
8.	Distance	Village	Within PU limit 2 kms

After taking into account of the parameters prescribed in G.O.Ms.No.163 Social Welfare Department, the Selection Committee, has recommended the fifth respondent and finally issued orders. Therefore, the impugned order does not call for any interference, as pleaded. It is also the stand of the respondents that both the petitioner as well as the fifth respondent are residing within the Marungapuri Panchayat Union. Therefore, the contention made by the petitioner that she should be given preference, as she is the only candidate available in that locality, is wholly unsustainable since the fifth respondent is also residing within the radius of 2 kms and the same has been certified by the Engineering Assistant, which was recorded during the selection process.

6. However, in reply affidavit has been filed to the counter affidavit of the third respondent stating that the fifth respondent is residing at kalingapatti - Othakadi, which is 29 Kms away from the place of posting ie., Ekkarai Kosikurichi Village. On the other hand, the petitioner is residing in the same village. Therefore, in addition thereto, the petitioner also filed a certificate issued by the President of Ekkarai Kosikurichi Panchayat, that the fifth respondent has not resided at Ekkarai Kosikurichi and the Public Information Officer cum Deputy Block Development Officer, Panchayat Union, Vaiyyampatti also confirmed that the candidate applied for the post in question should be resided within 3 km radius from the place of appointment. In addition thereto, the Junior Engineer, Highway, Marungapuri, Public Information Officer cum Assistant Divisional Engineer Highways construction and maintenance Division Manaparai confirmed the certificate issued by the Junior Engineer, Marungapuri Panchayat Union also clearly shows that the distance between



Kalingapatti and Ekkarai Kosikurichi Village is 29.20 km, suppressing the said aspect, the appointment has been made to the fifth respondent. Moreover, the fifth respondent has also been transferred now to another village as a result, the vacant for the fifth respondent was appointed subsequently. Therefore, a direction may be issued to the respondents to consider the appointment of the petitioner in the said post.

7. When the petitioner and the fifth respondent applied for the post of Cooking Assistant in the fourth respondent School, it is the claim of the petitioner that as per G.O. Ms. No. 163 Social Welfare and Nutritious Meal Programme Department, dated 18.09.2010, she being a widow and resided in the same village, should have been given top priority. But, in the counter affidavit filed by the respondent, it is stated that the fifth respondent also a widow and her husband died on 30.09.2014 and the same has been supported by the ration card belonging to the fifth respondent. But the crucial point needs for determination by this Court is whether the fifth respondent also hails from the same village. Admittedly, the counter affidavit filed by the respondent shows that she is coming from 2 km, which has been disproved by the reply affidavit with the certificate issued by various authorities. The Junior Engineer, Highway, Marungapuri has certified that the distance between the place of Ekkarai Kosikurichi Village is 29 km away from Kalingapatti - Othakadai.

8. When the fifth respondent is coming from 29 km away, it will not be possible for her to prepare food for the students. More particularly, in the event of any rain or inclement weather, it will be difficult for the fifth respondent to come every day from 29 km away from the place of post viz., Ekkarai Kosikurichi Village. Therefore, the appointment made to the fifth respondent is liable to be set aside on the score that she is coming from far of distance. It is also to be mentioned herein that the issue whether the candidate belongs to the same village alone should be considered for appointment to the post of Cooking Assistant or not it is necessary that if the candidate hailing from the same village is considered the candidates are coming from the distance of 5 km can also be considered. But, in the present case, the fifth respondent is coming from almost 30 kms and it is not known how the respondents have considered the fifth respondent. In any event, the learned Additional Government Pleader appearing for the respondents submitted that now the fifth respondent is transferred from the place for which, the present writ petition is filed challenging the appointment of the fifth respondent and that place has become vacant. Therefore, for the said vacant place, the petitioner has already taken part in the selection process on two grounds that she is a widow and hailing from the same village and

9. Therefore, having accepted the said submission, this Court is not inclined to set aside the impugned order of the fifth respondent. However, the respondent is directed to appoint the petitioner in the vacant place, as she is a widow and hailing from the same village, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To

1. Principal Secretary,
Social Welfare and Noon
Meal Department, Secretariat,
Fort St. George,
Chennai-9.

2. The District Collector,
Trichy District,
Trichy.

3. The Commissioner,
Marungapuri Union,
A. Kallupatti,
Trichy District.

4. The Headmaster,
Panchayat Union Middle School,
Marungapuri Panchayat Union,
Ekkarai Kosikurichi Village and Post,
Trichy District.

+1cc to M/S. A. SARAVANAN, Advocate, SR.No.67484.

+1cc to Special Government Pleader, SR.No.68283.

W.P (MD) No.17431 of 2016
25.07.2017

Ns/psd

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<https://hcsdcs.south.gov.in/Case>