

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4493 of 2011
and M.P.Nos.1 and 2 of 2011

G.Mageshwari

..Petitioner

Vs

1.The Commissioner of Social Welfare
Chennai-600 005

2.The District Collector
Krishnagiri District
Krishnagiri

3.The Panchayat Union Commissioner
Mathur, Krishnagiri District.

4.Thilagavathy

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent relating to orders i (i)Na.Ka.No.38887/07/X-1, dated 11.10.2007 and (ii) Na.Ka.No.46041/07/X-1 dated 29.07.2010, to quash the same and to issue consequential directions to the 2nd respondent to comply with the order of the 1st respondent in Pro.Na.Ka.No.46621/2007/NMP(Nir-2)-1 dated 10.02.2009 by cancelling the appointment of the 4th respondent and appointing the petitioner as Nutritious Meal Organiser, Kottanoor Centre.

For Petitioner : Mr.D.Baskar

For Respondents: Mr.A.Zakir Hussain, Govt.Advocate
for R1 to R3.

ORDER

Even though the Writ Petitioner sought prayer seeking to quash (i) order of the 2nd respondent dated 11.10.2007 and (ii) the order dated 29.07.2010; to issue consequential directions to the 2nd respondent to comply with the order of the 1st respondent

dated 10.02.2009 by cancelling the appointment of the 4th respondent and appointing the Petitioner as Nutritious Meals Organiser, Kottanoor Centre, after elaborate arguments, the counsel for the Petitioner has made an endorsement to the effect that since the order passed by the 2nd respondent dated 11.10.2007 has been set aside by the 1st respondent in his proceedings dated 10.02.2009, the prayer in the Writ Petition challenging the order dated 11.10.2007 is given up.

2. It is averred by the Petitioner in the affidavit filed in support of the Writ Petition that the 3rd respondent issued Notification during October-November 2006, inviting applications for filling up the vacancies of Nutritious Meals organisers/Cooks/Assistant Cooks in the Nutritious Meal Centres in Kaveripattinam Panchayat Union. The norms prescribed for appointment has also been published in the aforesaid notification. It is further averred that the Writ Petitioner belongs to Most Backward Community, she studied upto +2 and a widow and she is eligible for appointment to the Post of Nutritious Meals Organiser in the Panchayat Union Elementary School, Kottanoor. However, without properly considering the eligibility criteria of the Petitioner, the 3rd respondent, by order dated 02.08.2007, appointed the 4th respondent as Nutritious Meals Organiser, who hails from a well to do family and whose husband is stated to be working in abroad. According to the Petitioner, while comparing with the 4th respondent, she is more eligible for the said post. Stating so, the Writ Petitioner has challenged her non-selection to the Post of Nutritious Meals Organiser and preferred appeal dated 06.08.2007 before the 1st respondent. Since there was no response to the said appeal, the Petitioner filed W.P.No.27916 of 2007 before this court, seeking direction to the 1st respondent to consider her appeal dated 06.08.2007. This Court, by order dated 23.08.2007 in W.P.No.27916 of 2007, issued directions to the 1st respondent to consider the Petitioner's grievance and pass orders in accordance with law.

3. Thereupon, the 2nd respondent, in his Na.Ka.No.38887/07/XI dated 11.10.2007 passed orders stating that the appointment of 4th respondent is in conformity with the norms as she has been living below poverty line. Thereafter, during the pendency of Contempt Petition No.1081 of 2008, which was filed by the Petitioner for not complying with the order of this court, the 1st respondent passed order dated 10.02.2009, pointing out that the appointment of the 4th respondent is not in conformity with the guidelines and norms prescribed for such appointment. The 1st respondent also issued directions to the 2nd respondent to reconsider the appointment of the 4th respondent dated 10.02.2009 and further directed to appoint a qualified person as per norms prescribed. However, thereafter, the

impugned order dated 29.07.2010, has been passed by the 2nd respondent, stating that the appointment of the 4th respondent has been made in conformity with the norms prescribed. Challenging the said order dated 29.07.2010, the Petitioner filed the present Writ Petition.

4. The learned counsel for the Petitioner contends that the appointment of the 4th respondent as Nutritious Meals Organiser is not in conformity with the guidelines and norms prescribed for the said appointment. Further, the 2nd respondent has passed the erroneous order dated 29.07.2010 stating that the 4th respondent has been appointed as Nutritious Meals Organiser at Kottanoor Centre, on merits, but without giving any reason for rejecting the application of the Petitioner. Therefore, the counsel for the Petitioner seeks to direct the 2nd respondent to comply with the order of the 1st respondent dated 10.02.2009 and to reconsider the appointment of the 4th respondent and to pass further orders.

5. The learned Government Advocate would submit that pursuant to the order passed by the 1st respondent dated 10.02.2009, the 2nd respondent has considered the representation of the Petitioner and by conducting personal hearing of both petitioner and 4th respondent, came to know that the Writ Petitioner was owning a rice mill and getting higher income from the shop building and she is residing in the double storeyed building and therefore, she did not come under the category of Low income group while comparing with the 4th respondent. Thus, the learned Government Advocate supported the impugned order dated 29.07.2010 stating that the said order has been passed only on merits.

6. The Points for determination in the present Writ Petition are:-

(1) Whether the impugned order dated 29.07.2010 passed by the 2nd respondent is a speaking order and a reasoned one?

(2) Whether the 2nd respondent has granted opportunity to the Writ Petitioner to put forth her views for claiming the Post of Nutritious Meals Organiser as pointed out in the counter affidavit.

7. On going through the entire facts and circumstances of the case, it is seen that the 2nd respondent has passed the impugned order dated 29.07.2010, pursuant to the order passed by this court in W.P.No.27916 of 2007 dated 23.08.2007. In the said order dated 29.07.2010, the 2nd respondent has stated that the appointment of 4th respondent as Nutritious Meal Organiser, is in accordance with law and in accordance with the eligibility criteria and as per the Rules. However, it is apparent that the impugned order dated 29.07.2010 passed by the 2nd respondent is not a Speaking order or a reasoned one, since the 2nd respondent

has not properly taken note of the directions issued by the 1st respondent in his order dated 10.02.2009. Further, it is seen that the 2nd respondent has rejected the request of the Petitioner, without any reasons. In the counter affidavit, the 2nd respondent has adduced reasons that the Writ Petitioner owned a rice mill and comes under the higher income group category and therefore, the Petitioner was not selected for the post of Nutritious Meal Organiser, but, the said reasons were not discussed or whispered in the impugned order dated 29.07.2010 passed by the 2nd respondent. Therefore, it is clear that the order dated 29.07.2010 passed by the 2nd respondent is also passed without giving sufficient opportunity to the Writ Petitioner to put forth her contentions at the time of enquiry. Therefore, in my considered view, the said impugned order dated 29.07.2010, passed by the 2nd respondent is in violation of principles of natural justice as no sufficient opportunity is given to the Petitioner to express her grievance. Therefore, this court is inclined to quash the impugned proceedings dated 29.07.2010 and remit the matter back to the 2nd respondent to consider and pass orders afresh, after providing opportunity to the parties concerned.

8. In the light of the aforesaid facts and circumstances of the case, this court is inclined to pass the following order:-

(1) The impugned order passed by the 2nd respondent dated 29.07.2010 in Na.Ka.No.46041/07/X-1, is quashed and the matter is remitted to the 2nd respondent to consider afresh.

(2) Liberty is granted to the Writ Petitioner to appear before the 2nd respondent within one week from the date of receipt of a copy of the order and the Petitioner shall furnish particulars and representation, if any, to the 2nd respondent.

(3) The 2nd respondent shall provide opportunity to both the Writ Petitioner as well as the 4th respondent, to put forth their contentions in support of their application for the post of Nutritious Meal Organiser and consider the same and pass reasoned orders, in accordance with law, as early as possible, preferably within twelve weeks.

9. In the result, the Writ Petition is allowed with the above directions. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Commissioner of Social Welfare
Chennai-600 005

2.The District Collector
Krishnagiri District
Krishnagiri

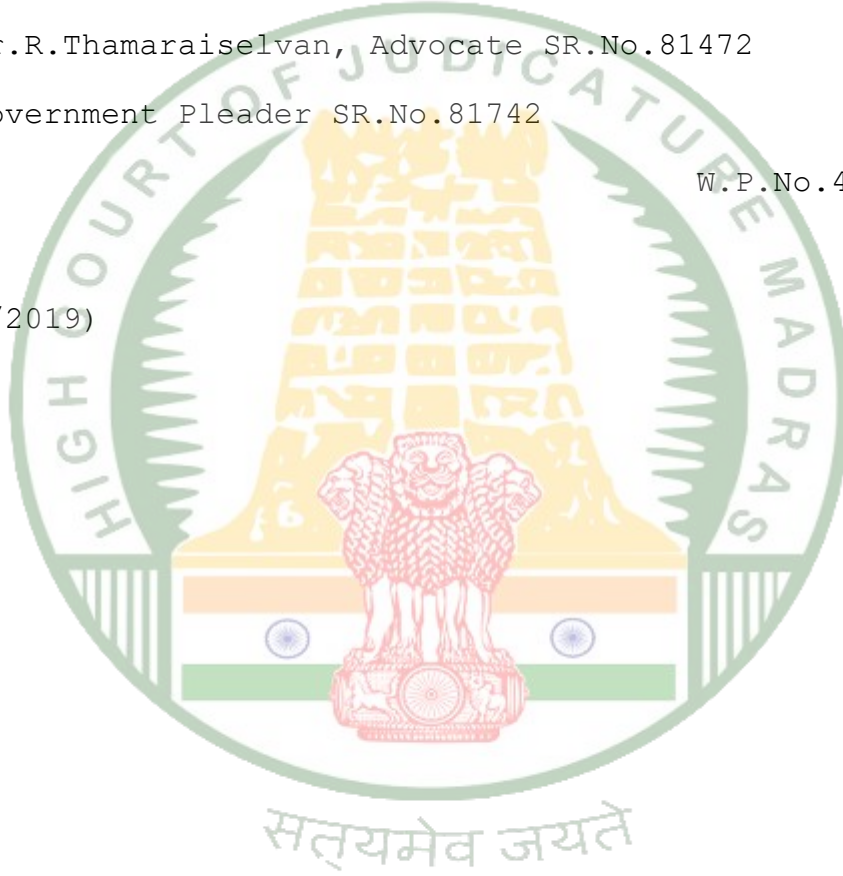
3.The Panchayat Union Commissioner
Mathur, Krishnagiri District.

+1cc to Mr.R.Thamaraiselvan, Advocate SR.No.81472

+1cc to Government Pleader SR.No.81742

W.P.No.4493 of 2011

MG (CO)
GMY (11/01/2019)



WEB COPY