

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2018

CORAM

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.21408 and 21409 of 2017

S.Thilshath .. Petitioner in W.P.No.21408 of 2017

B.Naseema .. Petitioner in W.P.No.21409 of 2017

vs

1. The District Collector,
Villupuram,
Villupuram District.
2. The Secretary to the Government,
Social Welfare and Nutritious Meal
Programme Department,
St.Fort George, Chennai 600 009
3. The Block Development Officer (B.D.O)
The Block Development Office,
Ulundupet.
4. The Secretary,
The District Nutritious Noon Meal
Programme Division Office,
Villupuram,
Villupuram District .. Respondents in W.P.No.21408 of 2017

1. The District Collector,
Villupuram,
Villupuram District.
2. The Block Development Officer (B.D.O)
The Block Development Office,
Ulundupet.
3. The Secretary to the Government,
Social Welfare and Nutritious Meal
Programme Department,
St.Fort George, Chennai 600 009

4. The Secretary,
The District Nutritious Noon Meal
Programme Division Office,
Villupuram,
Villupuram District .. Respondents in W.P.No.21409 of 2017

Prayer in W.P.No.21408 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to appoint the petitioner as of Nutritious Noon Meal Organizer under the Muslim reservation in the Poovanur Municipality Primary School, Virudhachalam Taluk, Villupuram District on the basis of interview conducted on 01.12.2017.

Prayer in W.P.No.21409 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to appoint the petitioner as of Nutritious Noon Meal Organizer under the Muslim reservation in the Bangaram Municipality Primary School, Chinnasalem Taluk, Villupuram on the basis of interview conducted on 31.01.2017.

W.P.No.21408 of 2017

For Petitioner : Mr.A.Thiyagarajan,
Senior Counsel for
Mr.S.Ramesh Kumar

For Respondents 1,2&4: Ms.A.Sri Jayanthi
Special Government Pleader

For Respondent 3 : Mr.O.R.Maheswaran

W.P.No.21409 of 2017

For Petitioner : Mr.A.Thiyagarajan,
Senior Counsel for
Mr.S.Ramesh Kumar

For Respondents1,3 & 4 : Ms.A.Sri Jayanthi
Special Government Pleader

For Respondent-2 : Mr.M.Elumalai

C O M M O N O R D E R

The relief sought for in these writ petitions are for a direction to direct the respondents to appoint the petitioners as Nutritious Noon Meal Organiser under the Muslim reservation in the Poovanur Municipality Primary School, Virudhachalam Taluk, Villupuram District and Bangaram Municipality Primary School, Chinnasalem Taluk, Villupuram on the basis of interview conducted on 01.12.2017 and 31.01.2017.

2.Learned senior counsel appearing on behalf of the writ petitioners made a submission that the writ petitioners had studied in Government Girls Higher Secondary School, Chinna Salem and completed S.S.L.C. and +2 in the years 1993 and 2005-06 respectively and thereafter, they have registered their names in the District Employment Office, Villupuram and Salem on 05.05.2011. The petitioners obtained the Nativity Certificates and also Income Certificates showing that they are eligible to seek appointment in the said posts of Nutritious Noon Meal Organiser. Pursuant to the employment seniority, the writ petitioners were called for to attend the interview by the competent authority and accordingly, the writ petitioners participated in the process of interview. The petitioners appeared in the interview on 01.02.2017 and 31.01.2017 and submitted the copies of the certificates and other required documents. However, they were not selected. On enquiry, the respondents informed that there are no Muslim candidates and therefore, the reserved post for Muslim candidates are kept vacant and the writ petitioners have been denied appointment stating that they are residing not within the jurisdiction and therefore, as per the terms and conditions of the Government Order, the petitioners cannot be appointed.

3.Learned senior counsel contends that the respondents cannot reserve a post for Muslim, where there is no Muslim candidate available. Thus, the Government has to adopt a pragmatic and practical approach, so as to fill up the public posts in a logical way. On the ground that there is no Muslim residing in that particular village and as per the terms and conditions of the Government order stating that a person who is residing outside the jurisdiction, cannot be appointed as Nutritious Noon Meal Organiser, the writ petitioners have been denied appointments.

4.Though such contentions are raised before this Court, neither the recruitment notification nor the recruitment rules issued by the Government has been challenged in these writ petitions. This apart, the recruitment rules are formulated in G.O. 163 Social Welfare and Nutritious Meal Department dated 18.08.2010 prescribing qualifications and selection process for

appointment to the post of Nutritious Meal Centre Organiser. The terms and conditions formulated in the above Government Order are applicable to all the areas and as such there is no separate regulation for a particular village. If at all such circumstances arise, where a post is reserved for a Muslim candidate in a particular village and if there is no Muslim candidate available in the village, then the Government has to consider and issue relaxation of rules and otherwise in respect of the recruitment notification to be issued in that particular village. However, such relaxation or necessary orders are to be issued only by the Government by invoking powers of relaxation. But in case, the recruitment notification is issued and a candidate who participated in the process of selection is not selected, then he/she cannot file a writ petition and say that the recruitment notification is contrary to the principles of law. Further neither the recruitment notification nor the service rules in G. O. Ms. No.163 Social Welfare and Nutritious Meal Department dated 18.08.2010 has been challenged in the present writ petitions.

5. Under these circumstances, it is for the Government to address these issues in respect of certain peculiar circumstances prevailing in any one of the villages and take a decision if necessary and grant relaxation or otherwise insist the appointing authority to fill up the post, on merits and in accordance with law by following the rules.

6. Appointment can never be claimed as a matter of right. All appointments are to be made only by following the rules in force. Equal opportunity in public employment is the constitutional mandate. All the persons eligible are to be provided with an opportunity to participate in the process of selection and the rule of reservation in this regard are also scrupulously followed by the competent authority at the time of undertaking the process of selection. Thus, it is made clear that all recruitments to the public posts are to be done only under the constitutional schemes and by following the rules in force scrupulously and without any violation. The

principles in this regard enunciated in the constitution can never be compromised by the competent authorities.

7. Under these circumstances, the present writ petitions seeking to appoint the writ petitioners can never be considered by the Writ Court under Article 226 of the Constitution of India. Even the process of selection can be challenged if there is a malpractice or violation of rules or if there is corrupt practices. In the event of establishing any such illegal activities in the process of selection, the writ Court would entertain the writ petitions for appropriate relief. Thus, the

relief as such sought for cannot be granted and it is for the State to assess all the discrepancies arising in certain villages based on certain peculiar circumstances and take remedial measures for the purpose of filling up of the posts in the manner known to law. Accordingly, these writ petitions are dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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The District Nutritious Noon Meal
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Villupuram,
Villupuram District.

+2cc to MR.S.Rameshkumar, Advocate SR.NO.54518, 54517
+1cc to Government Pleader SR.NO.55037, 54730
+1cc to MR.O.R.Maheswaran, Advocate SR.NO.5604

NM(CO)

sm:4.9.2018

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