

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P. No.32810 of 2012

G.Kumutha

... Petitioner

Versus

1. The District Collector,
Dharmapuri District.
Dharmapuri.
 2. The Block Development Officer,
Harur Taluk,
Dharmapuri District.
 3. V.Thulasi,
Noon Meal Organiser,
Kathiripatti Elementary School,
Harur Taluk,
Dharmapuri District.
- ... Respondents

Writ petition filed under Article 226 of Constitution of India to issue Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings having reference No.11393/2012/X1, dated 25.09.2012 issued by the 1st respondent and the consequential proceedings having Ref. No.Ka. No.1691/2012/A4, dated 06.11.2012 issued by the 2nd respondent terminating the petitioner from the Post of Noon Meal Organizer at Kathiripatti Elementary School in Harur Taluk and appointing the 3rd respondent in the said vacancy and quash the same consequently direct respondents to allow the petitioner to continue in the said post of Noon Meal Organizer at Kathiripatti Elementary School in Harur Taluk.

For Petitioner : Ms. Kavitha Deenadayalan

For Respondents : Mr.D.Venkatachalam,

Additional Government Pleader for RR1 & 2
Mr.N.Sakthivel for R3.

ORDER

This Writ Petition has been filed to issue Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings having reference No.11393/2012/X1, dated 25.09.2012 issued by the 1st respondent and the consequential proceedings having Ref. No.Ka. No.1691/2012/A4, dated 06.11.2012 issued by the 2nd respondent terminating the petitioner from the Post of Noon Meal Organizer at Kathiripatti Elementary School in Harur Taluk and appointing the 3rd respondent in the said vacancy and quash the same consequently direct respondents to allow the petitioner to continue in the said post of Noon Meal Organizer at Kathiripatti Elementary School in Harur Taluk.

2. The second respondent, vide proceedings dated 29.06.12, called for eligible candidates for selection of appointment to the post of Noon Meal Organiser created under the MGR Nurtritious Noon Meal Scheme by direct recruitment method. The vacancies were notified in Harur Taluk. The minimum educational qualification for consideration of appointment to the said post was a pass in 10th standard. The petitioner was qualified educationally and almost eligible in all respects for consideration of appointment as Noon Meal Organizer.

3. After subjecting the petitioner to the selection along with other candidates, the petitioner was appointed on 21.08.2012 as Noon Meal Organiser at Kathiripatti Elementary School in Harur Taluk in the pay scale of Rs.2,500-5000 + 500. She was also directed to join the post thereafter and in response to the direction, she joined the post on 24.08.2012. Since her appointment, she was working as Noon Meal Organiser without any complaint. While so, the first respondent, vide proceedings dated 25.09.2012, appointed the 3rd respondent in the school, where the petitioner was posted to work. The 3rd respondent was appointed in the place of the petitioner on the ground that the petitioner was residing 12 kms away from the place of work and her husband was also employed in a Government fair price shop. In view of the same, her appointment was eventually cancelled.

4. The appointment of the 3rd respondent, and the consequential orders dated 25.09.2012 and 06.11.2012 of the first and second respondents respectively are challenged before this Court.

5. The learned counsel appearing for the petitioner would submit that at the time of appointment when the petitioner was selected in respect of the post mentioned in the selection Notification, there was no mention about any distance that a person must reside within a particular distance for consideration of appointment. Even in the appointment letter, nothing has been mentioned about the distance. However, only in

the impugned order dated 25.09.2012, that it is mentioned that the petitioner was having her residence 12 kms away from the School in which she was posted. The petitioner was at a loss to understand on which basis, the 3rd respondent was appointed and the resultant cancellation of the petitioner's appointment, on the basis of distance, since that was not the requirement at all.

6. Upon notice respondents entered apperance through counsel and filed counter affidavit on behlaf of respondents 1 and 2. It is admitted in the counter that the petitioner secured higher marks than other students, who have participated in the selection and therefore, she was selected. The fact that she was appointed and joined duty is also admitted

7. According to the respondents in terms of G.O. Ms. No.163, dated 18.08.2010, the person who is to be appointed as Noon Meal Organiser should reside within 12 kms from the place of posting, whereas, the petitioner was living far away about 15 kms from the place of posting. On subsequent finding of the said fact, the petitioner's appointment was cancelled.

8. In any event, as contended by the learned counsel appearing for the petitioner, the factum of distance criteria had not been mentioned either in the selection Notification or in the appointment order issued by the petitioner. That being the case, the subsequent action by the second respondent in cancelling the appointment of the petitioner cannot be justified at all. Moreover, it is an admitted fact that the petitioner has secured higher marks than the other candidates participated in the selection. That being the case, distance of 12 kms, is not a material fact to be taken into consideration for cancelling the appointment of the petitioner. Moreover, there was no complaint about the performance and discharge of work by the petitioner.

9. During the course of arguments, this Court ascertained the fact as to whether there were any vacancies available in the nearby places, in order to accommodate the petitioner without disturbing the appointment of the 3rd respondent, who has been already appointed in 2012 and working as such. In response to the direction of this Court, it is informed by the learned Additional Government Pleader that at present, there are 14 vacancies available in the same Taluk and he has produced a copy of the communication dated 27.02.2018, sent by the Commissioner of Harur Taluk Panchayat, wherein, the details of the vacancies have been mentioned. That being the case, the 1st and 2nd respondents are directed to accommodate the petitioner by appointing her in any one of the vacancies which are mentioned in the communication dated 27.02.2018, within a period of four weeks from the date of receipt of copy of the order.

The respondents 1 and 2 shall strictly comply with the above direction within the time stipulated.

10. With the above direction, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition, if any is closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The District Collector,
Dharmapuri District.
Dharmapuri.
2. The Block Development Officer,
Harur Taluk,
Dharmapuri District.
- 2 cc to Ms.Kavitha Deenadayalan, Advocate Sr.No.16605
- 1 cc to The Government Pleader Sr.No.16292

W.P. No.32810 of 2012

RRI 10/04/2018

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