

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.8585 of 2017

R.Ramesh

... Petitioner

vs.

1.The District Collector,
Salem District, Salem.

2.The Personal Assistant to District Collector,
Noon-meal Scheme,
Salem District, Salem.

3.The Commissioner/Block Development Officer,
Tharamangalam Panchayat Union,
Tharamangalam, Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to reappoint the petitioner as Noon-meal organizer or any other suitable post by considering his qualification viz., +2 based on the representation dated 27.03.2017 in terms of judgment of this Court in W.P.No.29211 of 2010 dated 03.11.2013.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.I.Sathish (for R1)
Additional Government Pleader

: R2 - Service awaited

: Mr.D.SuriyaNarayanan (for R3)
Additional Government Pleader

O R D E R

The petitioner seeks for a mandamus directing the respondents to reappoint him as Noon-meal organizer or any other suitable post by considering his qualification viz., +2 based on his representation dated 27.03.2017 in terms of the judgment of this Court in W.P.No.29211 of 2010 dated 03.11.2013.

2. The petitioner's mother was working as Cook in Moonguthur Panchayat Union Elementary School. While she was on duty, she met with an accident on 10.05.2013 and died. The petitioner made an application on 27.08.2015 for compassionate appointment as Noon-meal organizer. However, the petitioner was appointed as a Cook by an order dated 22.02.2017 issued by the first respondent. The petitioner is having +2 qualification to the post of Noon-meal organizer. Therefore, the petitioner claims that he should have been considered for the post of Noon-meal organizer. Thus, the petitioner made a representation on 27.03.2017, by relying an order of this Court in respect of another similarly situated person in W.P.No.29211 of 2010 dated 04.11.2013.

3. A counter affidavit is filed, wherein it is stated that till now, the petitioner is working as Cook and in future, based on his qualification, the petitioner has opportunity for promotion as Noon-meal organizer. It is also stated in the counter that the petitioner is not entitled for Noon-meal organizer as compassionate appointment, since the deceased mother worked as Noon-meal cook.

4. Heard both sides.

5. The claim of the petitioner is that with his educational qualification of Plus Two, he should have been considered to the post of Noon-meal organizer instead of appointing him in the post of Cook, merely because his mother was working as a Cook. The very same issue was considered by this Court under similar circumstances in W.P.No.29211 of 2010, wherein an order was passed on 04.11.2013. Paragraphs 5, 6 and 7 of the said order read as follows:

"5. The request of the petitioner seeing for compassionate appointment as Noon Meal Organizer was rejected by the impugned order only on the reason that she can be considered to the post of Cook/Cooking Assistant only since her deceased mother was working as a Cook. No doubt the respondent relied on G.O.Ms.No.215 dated 08.09.1998. But, as contended by the petitioner, the Government of Tamilnadu while issuing another G.O. in G.O.Ms.No.42 Labour and Employment Department dated 12.03.2007 has observed at paragraph No.4 of its G.O. as follows:

"4.Appointment on compassionate grounds are made in 'C' and 'D' Groups only. Neither the qualification of the applicant nor the post held by the deceased employee is relevant. Appointment to the posts in 'B'

Group cannot be made as laid down by the Supreme Court. The appointing authority shall, however, consider if the dependent of the deceased employee wishes to accept employment in 'C' Group and if otherwise eligible. Pending applications seeking compassionate appointments under 'B' Group be disposed off accordingly."

6. From the reading of the above Government Order, it could be seen that the Government was fully conscious that the post held by the deceased employee was not relevant for considering the claim of compassionate appointment. Therefore, when that being the subsequent G.O., I am unable to appreciate the stand taken by the respondent in denying compassionate appointment to the petitioner only on the reason that her mother was working as a Cook and therefore, she is entitled to be considered only to the said post. Needless to say that consideration to the appointment on compassionate ground is to be made based on the qualification of the applicant not on the post in which the deceased was working. In other words, there cannot be any justification to say that a son/daughter of a Cook has to necessarily work only as a Cook and not in any other suitable post even though he/she possess requisite qualification to such post. In fact, such stand taken by the respondent shakes the judicial conscious. An individual may think or consider that a job or business being carried out by him has to be carried over by his descendants with hereditary character. He may have a right or justification to think so. Certainly not the state. It can never compel a person to carry on a job of his/her father or mother. Therefore, I am of the firm view that the reason for denial in this case cannot be sustained. Certainly, that cannot be the intention and object of the welfare state. Moreover, the very same respondent through his proceedings dated 27.11.2009 has recommended the petitioner for appointment to the post of Noon Meal Organizer on that ground. Such recommendation was made by the respondent to the Commissioner of Social Welfare and Noon Meal Department. Without reference to the earlier recommendation made, the impugned order came to be passed by the very same respondent

unfortunately by citing an unsustainable reason. No other reasons are cited by the respondent in denying the appointment.

7. Therefore, I am of the view that the petitioner is entitled to succeed in this writ petition and accordingly, the impugned order is set aside and the respondent is directed to consider the claim of the petitioner and pass appropriate orders without reference to the G.O.Ms.No.215 dated 08.09.1998 within a period of 8 weeks from the date of receipt of a copy of this order, if the qualification of the petitioner is otherwise suitable to the post of Noon Meal Organizer and also by considering the vacancy position. The writ petition is allowed. No costs."

6. It is stated by the learned Counsel appearing for the petitioner that the above said order passed by this Court was implemented and therefore, the same benefit should be given to the case of the petitioner. The learned Government Advocate is not in a position to place any contra fact in respect of the above said order.

7. Considering the above stated facts and circumstances and in view of the order already passed by this Court in W.P.No.29211 of 2010 dated 04.11.2013, as extracted supra, this Court is of the view that the petitioner is also entitled for the similar relief. Accordingly, the first respondent is directed to consider the petitioner's representation dated 27.03.2017 and pass orders on the same in the light of the order passed by this Court in W.P.No.29211 of 2010 dated 04.11.2013 within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mtl/vri

To

1. The District Collector,
Salem District, Salem.

2. The Personal Assistant to District Collector,
Noon-meal Scheme,
Salem District,
Salem.

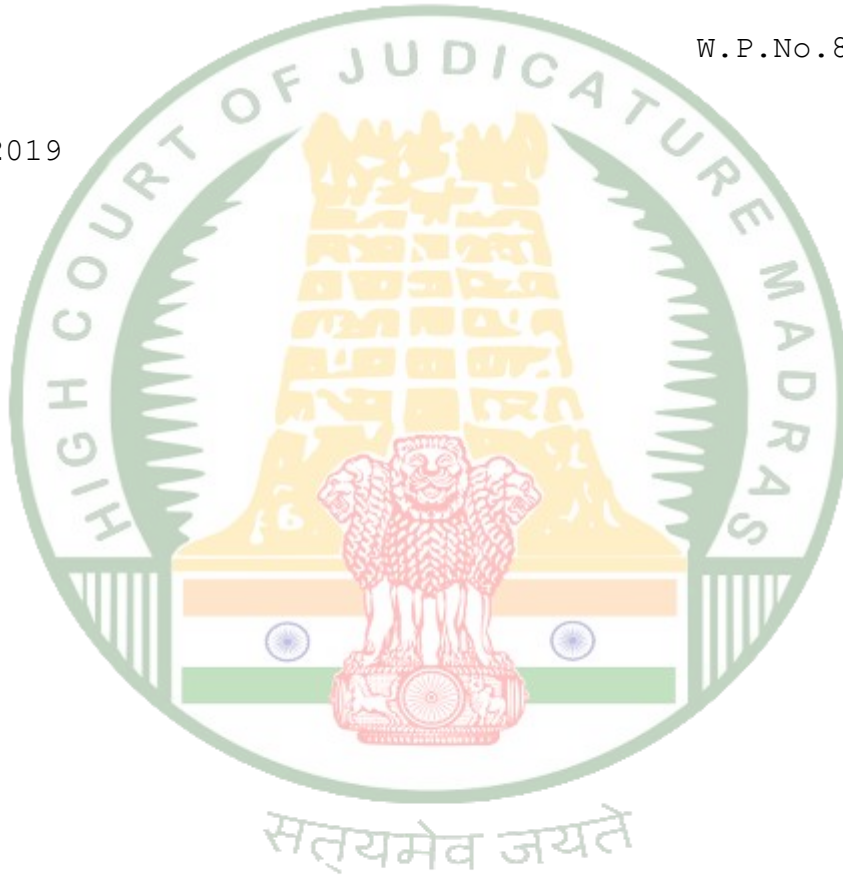
3. The Commissioner/Block Development Officer,
Tharamangalam Panchayat Union,
Tharamangalam,
Salem District.

+lcc to Mr.M.R.Jothimanian, Advocate, S.R.No.82469

+lcc to the Government Pleader, S.R.No.82971

W.P.No.8585 of 2017

MR(CO)
CS/07/01/2019



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