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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.32064 of 2007
and M.P.Nos.1 & 2 of 2007, 1 of 2008, 1 and 2 of 2010
and

W.P.No.312 of 2008
and M.P.Nos.1 and 2 of 2008

K.Brinda

.. Petitioner in
W.P.No.32064 of 2007

S.Tamilselvi

.. Petitioner in
W.P.No.312 of 2008

Vs.

1.The District Collector,
Thiruvannamalai Post,
Thiruvannamalai District.

2.The Block Development Officer (Va. Vu)
Thellar, Vandavasi Taluk,
Thiruvannamalai District.

3.The Commissioner,
Panchayat Union, Thellar Village & Post,
Vandavasi Taluk, Thiruvannamalai District.

.. Respondents in both W.P.s

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the circular issued by the 3rd respondent bearing Na.Ka.Va.A6/3578/2007 dated 10.09.2007, quash the same and direct the respondent to select and appoint one candidate for the post of Noon Meal Organizer, Ponnur from among the six candidates including the petitioners who appeared for interview on 12.04.2007.



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For Petitioner : M/s.G.Devi
(in W.P.No.32064/2007) for Mr.V.Raghupathi

For Petitioner : M/s.G.Devi
(in W.P.No.312/2008) for Mr.P.P.Shanmugasundaram

For R1 & R2 : Ms.R.Janaki,
(Additional Government Pleader)

For R3 : Mr.R.Thirugnanam

C O M M O N O R D E R

The present Writ Petitions are filed for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the circular issued by the 3rd respondent bearing Na.Ka.Va.A6/3578/2007 dated 10.09.2007, quash the same and direct the respondents to select and appoint one candidate for the post of Noon Meal Organizer, Ponnur from among the six candidates including the petitioners who appeared for interview on 12.04.2007.

2.The issue involved in both the Writ Petitions are one and the same and hence, they are disposed of by this common order.

3.Case of the petitioners:

The petitioners belong to Backward Class community and have passed S.S.L.C. The 3rd respondent by the circular dated 19.02.2007 bearing Reference No. e.f.v.m6/704/2007, called for applications for the post of Noon Meal Scheme Organizer for Ponnur Village. In the said circular, it has been stated that the said post was allotted to the Backward Class on communal rotation basis. The petitioners applied for the said post. The 2nd respondent by the letter dated 02.04.2007 bearing Reference No. e.f.t.m6/704/2007, asked the petitioners to attend the interview on 12.04.2007 at 10.00 a.m in the 3rd respondent's office with all the necessary certificates. The petitioners and four others attended the interview. On the same day, interview was conducted for the post of Ayas also. When the petitioners and four others were waiting for the outcome of the interview held for the post of Noon Meal Scheme Organizer, the 3rd respondent issued another circular bearing Reference No. e.f.t.m6/3578/2007 dated 10.09.2007, inviting applications for the same post. In the said circular, the post was allotted to the Most Backward Class community on communal rotation. The respondents have not given any reason for the sudden change. The respondents failed to see that interview was conducted for the



post of Noon Meal Organizer on 12.04.2007 from among the Backward Class candidates on communal rotation and circular dated 10.09.2007 is issued in violation of Article 16 of the Constitution of India. The sudden change to Most Backward Class is illegal, improper, unreasonable and contrary to law and ultra virus to the Constitution of India. The impugned circular is contrary to the Doctrine of Legitimate Expectation. For the above reasons, the petitioners filed the above two Writ Petitions to quash the circular dated 10.09.2007 bearing Reference No. e.f.t.m6/3578/2007 and to appoint one of the candidates for the post of Noon Meal Organizer, Ponnur Village, from among the six candidates, including the petitioners who appeared for the interview on 12.04.2007.

4. Case of the 3rd respondent:

The 3rd respondent filed counter statement stating that 56 vacancies for Noon Meal Organizer were identified in respect of Thiruvannamalai District in G.O. (Rt) No.4, Social Welfare & Nutritious Meal Programme Department, dated 05.01.2007. Based on the said G.O., reservation for 52 vacancies out of 56 vacancies was fixed on the basis of date of vacancies in the proceedings Roc.No.1155/2007/NMP-1, dated 14.02.2007. Post at Ponnur Village was allotted to the Backward Class community. The respondents along with six others applied for the said post. The Division Bench of this Court by the order dated 27.03.2007 made in W.A.No.507 of 2007, ordered that selection process for filling up the vacancies in the Nutritious Meal Centres can go on, but appointment should not be made. Based on the said order, the petitioners and others were called for interview and they attended the interview on 12.04.2007. The Division Bench by the order dated 20.04.2007 made in W.A.No.507 of 2007 had ordered to promote 810 Cooks and Cook Assistants who are eligible for promotion as Noon Meal Organizer all over Tamil Nadu. 24 Cook Assistants were eligible for promotion in respect of Thiruvannamalai District. Out of 24 persons, one person has already retired and one person relinquished his right for promotion as Noon Meal Organizer. 22 Cooks and Cook Assistants were promoted as Noon Meal Organizer and posted in 56 vacancies notified in G.O. (Rt) No.4, Social Welfare and Nutritious Meal programme Department dated 05.01.2007. Consequent to filling up of vacancies by promotion of Cooks and Cook Assistants, the reservation already ordered by the proceedings dated 14.02.2007 has become null and void as the percentage of reservation has changed. Out of 34 remaining vacancies, 3 were in Aided Schools for which reservation is not applicable. For the remaining 31 vacancies for the post of Noon Meal Organizer, reservation was ordered by the 1st respondent by the proceedings dated 20.08.2007 in Roc.No.1155/2007/NMP-1. The earlier reservation for Backward Class community for the vacancy in Ponnur Village has been changed to the Most Backward Class community due to revision of



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reservation of vacancies stated above. The said changes have been published in a Tamil Daily 'Dhina Boomi' dated 08.09.2007 to give wide publicity and create awareness among the petitioners. In view of the order passed by the Division Bench of this Court, 31 vacancies of the impugned circular dated 10.09.2007 is legal and in accordance with law.

5.The learned counsel appearing for the 3rd respondent further contended that by the order dated 29.02.2016, one Alamelu was appointed by the 3rd respondent in Ponnur Village. The petitioner in W.P.No.32064 of 2007 filed two Writ Petitions in W.P.Nos.4595 and 9136 of 2016, challenging the Notification published at page 13 of the Tamil Daily News Paper, "Dhina Thandhi", Vellore Edition, dated 28.01.2016, only in respect of filling up the post of Noon Meal Organizer in Government High School, Ponnur Panchayat, within Thellar Panchayat Union, Thiruvannamalai District and the proceedings of the District Collector, Thiruvannamalai District bearing Na.Ka.No.10791/2014/rcjp-1, dated Nil.02.2016, in respect of the post of Noon Meal Organizer in Government High School, Ponnur Panchayat, within Thellar Panchayat Union, Thiruvannamalai District. This Court by the order dated 18.03.2016, dismissed both the Writ Petitions. The learned counsel appearing for the 3rd respondent referred to paragraph Nos.5 and 7 of the order passed and prayed for dismissal of the Writ Petitions.

6.The petitioner in W.P.No.32064 of 2007 filed reply affidavit to the counter filed by the 2nd respondent and denied various averments made in the counter affidavit. According to the petitioners, W.P.No.8704 of 2007 is still pending. At the time of filing reply, it was pending and with regard to promotion of Cook and Cook Assistants, the Division Bench did not prohibit the respondents from appointing Noon Meal Organizer. The Division Bench passed orders for the qualified Cooks and Cook Assistants to be promoted and accommodated in the post of Noon Meal Organizer as a special case. The respondents have not properly and correctly explained as to how the proceedings dated 14.02.2007 has become null and void, consequent upon promotion of Cooks and Cook Assistants as Noon Meal Organizer. The percentage of reservation cannot be changed by Subordinate Authority, contrary to the policy of the Government which has been following the rule of reservation and prayed for allowing both the Writ Petitions.

7.Heard the learned counsel appearing for the petitioners, learned Additional Government Pleader appearing for the respondents 1 and 2 as well as the learned counsel appearing for the 3rd respondent and perused the materials available on record.



8. From the averments in the affidavit, counter affidavit and reply affidavit and contentions of the learned counsel appearing for the petitioners and respondents, it is clear that 56 vacancies arose in Thiruvannamalai District for appointment of Noon Meal Organizer. Only 52 posts fell within the purview of the reservation, as 4 vacancies arose in the Aided Schools. Based on the available 52 vacancies, the post of Noon Meal Organizer at Ponnur Village was allotted to the Backward Class community. While so, The Tamil Nadu Arasu Sathunavu Paniyalar Sangam filed Writ Petition for promotion of Cooks and Cook Assistants as Noon Meal Organizer and promotion of Cook Assistants to Cooks. The Division Bench of this Court in W.A.No.507 of 2007 filed against the order passed in M.P.No.1 of 2007 in W.P.No.8704 of 2007, refusing to grant interim injunction initially passed the order dated 27.03.2007, permitted the Authorities to proceed with selection process, but not to make any appointment. Based on the said order, the petitioners and others were called for interview on 12.04.2007 and no appointment order was issued. The Division Bench subsequently by the order dated 20.04.2007, recorded the statement of Government Pleader that 810 qualified Cooks and Cook Assistants would be promoted as Noon Meal Organizers and held that promotion of Cook Assistants as Cooks would be decided in the Writ Petition. The Division Bench vacated the interim order granted on 27.03.2007.

9. Based on the said judgment, the respondents promoted Cooks and Cook Assistants as Noon Meal Organizer. As per the averments made in the counter affidavit filed by the 3rd respondent, 24 Cooks and Cook Assistants were eligible for promotion as Noon Meal Organizers in Thiruvannamalai District. Out of 24 persons, one person retired and one person relinquished his right and only 22 persons were available for promotion and they were promoted as Noon Meal Organizers in Thiruvannamalai District. Out of the balance vacancies, three vacancies were in the aided Schools. By the proceedings dated 20.08.2007, the 1st respondent fixed the reservation based on the available vacancies by communal reservation rotation. The post of Noon Meal Organizer in the High School, Ponnur has been changed into Most Backward Class due the reduction of vacancies from 56 to 31. The petitioners have not denied that 24 Cooks and Cook Assistants were eligible for Noon Meal Organizers in Thiruvannamalai District. They have also not disputed that 22 persons were promoted as Noon Meal Organizers and 3 vacancies were in Aided Schools. On the other hand, it is their contention that no Cook or Cook Assistant was eligible for promotion as Noon Meal Organizer in Thellar Panchayat Union as they did not possess S.S.L.C qualification. The said contention is without merits. The respondents have taken steps to fill up 56 vacancies of Noon



Meal Organizer in Thiruvannamalai District and whether any Cook or Cook Assistant not being eligible for promotion as Noon Meal Organizer in Thellar Panchayat Union will not change the vacancies available in Thiruvannamalai District and the communal reservation rotation to be followed for the vacancy available in the year 2007 after the final judgment of the Division Bench of this Court dated 20.04.2007 in W.A.No.507 of 2007. As there is no dispute that only 31 vacancies were available after April 2007 based on the judgment of the Division Bench of this Court in W.A.No.507 of 2007, reservation by communal rotation allotted by the respondents cannot be said to be illegal. It is also not the case of the petitioners that the respondents did not follow the reservation for available 31 posts by following the communal rotation. In view of the same, the impugned circular does not suffer any infirmity.

10. In the result, both the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Thiruvannamalai Post,
Thiruvannamalai District.
2. The Block Development Officer (Va. Vu)
Thellar, Vandavasi Taluk,
Thiruvannamalai District.
3. The Commissioner,
Panchayat Union, Thellar Village & Post,
Vandavasi Taluk, Thiruvannamalai District.

+1cc to Mr.R.Thirugnanam, Advocate sr.50647
+1cc to Government Pleader sr.50606
+1cc to Mr.V.Raghupathi, Advocate sr.51126

W.P.Nos.32064 of 2007
and 312 of 2008

nr 29/08/2019