

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.16829 of 2010

P.Vijayalakshmi

... Petitioner

Vs.

1. The Commissioner of Social Welfare,
Chepauk, Chennai - 5.

2. The Collector,
Cuddalore, Cuddalore District.

3. Tmt.S.Chandra

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to consider the Petitioner's representation dated 22.05.2010 praying for setting aside the appointment of the third respondent as Noon Meal Organiser, Municipal Primary School, Karumarpettai, Cuddalore District and to appoint the Petitioner in her place by giving preference to her since she is a widow.

For Petitioner : Mr.P.Rajendran

For R1 & R2 : Mr.R.P.Prathap Singh
Government Advocate

For R3 : Mr.A.R.Nixon

ORDER

This Writ Petition has been filed seeking for a direction, directing the first respondent to consider the Petitioner's representation dated 22.05.2010 praying for setting aside the appointment of the third respondent as Noon Meal Organiser, Municipal Primary School, Karumarpettai, Cuddalore District and to appoint the Petitioner in her place by giving preference to her since she is a widow.

2. The case of the petitioner is that she is a resident of Manjakuppam, Cuddalore District and she is fully qualified for appointment to the post of Noon Meal Organiser. There was a vacant at the Municipal Primary School Karumarpettai, for the post of Noon Meal Organiser and since the petitioner is a widow and a resident of the same ward where the school is located, she also applied for the said post and attended the interview conducted on 25.02.2009. However, the Collector, Cuddalore, the second respondent herein, issued an order in Na.Ka.PD1/9516/08 dated 06.02.2010 appointing one Tmt.S.Chandra, the third respondent herein, as Noon Meal Organiser at the above said centre. Therefore, the petitioner submitted that since she is a widow, she is entitled to be considered for appointment to the post of Noon Meal Organiser on a priority basis in accordance with the orders of the Government in Govt. Letter No.25704/NM 1/92-2 Social Welfare and Nutritious Meal Programme Department, dated 29.06.1992, G.O.Ms.No.203, Social Welfare and Nutritious Meal (SW-7) Department, dated 19.08.2005, G.O.Ms.No.88, Social Welfare and Nutritious Meal Programme Department, dated 21.08.2006, G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 05.01.2007 and G.O.Ms.No.78 Social Welfare and Nutritious Meal Programme Department, dated 30.06.2008.

3. The petitioner further submitted that the third respondent is not a widow and since the second respondent appointed the third respondent to the said post in violations of the above Government Orders, she sent a representation to the Commissioner of Social Welfare, Chennai - 600 005, the first respondent herein, on 22.05.2010 with a prayer to set aside the appointment of the third respondent and appoint her as Noon Meal Organiser in the third respondent's place, but, till date, no order has been passed on the said representation and therefore, she approached this Court by way of this Writ Petition.

4. Denying the allegations of the petitioner, a counter affidavit has been filed by the second respondent by stating that as per instructions issued by the Government in its Letter No.25704/NMP-1/92-2, Social Welfare & Nutritious Meal Programme (NMP-1) Department, dated 29.06.1992, the candidates who are graduates by qualification are not preferred to be appointed as Noon Meal Organiser. The Government considers that the highly qualified people do not normally stay in such position as the emoluments is not lucrative. As and when they get lucrative jobs, they quit these posts, consequently, deserving children are put to severe hardships. Hence, the Government decided to avoid appointing candidates who possess collegiate education. The petitioner herein is a graduate having M.A., degree and therefore, she was not considered for the post of Noon Meal Organiser and the third respondent herein who is eligible for

the said post has been appointed in the existing vacancy in the Municipal Primary School, Karumarpet. Hence, sought for dismissal of this Writ Petition.

5. The third respondent herein also filed a counter affidavit, stating that since she was eligible to be considered for appointment to the post of Noon Meal Organiser, she was selected by the Section Committee and her appointment is made with reference to the Rules and Regulations of the Government of Tamil Nadu and no rules are violated in her case. Hence, sought for dismissal of this Writ Petition.

6. It is seen that there was a vacant for the post of Noon Meal Organiser at the Municipal Primary School Karumarpettai and the petitioner also applied for the same as she is a widow. After the interview conducted on 25.02.2009, the petitioner claim has been rejected and the third respondent has been appointed to the said post and therefore, the petitioner is before this Court.

7. Mr.R.P.Prathap Singh, learned Government Advocate appearing for the first and second respondents has produced a copy of the Service Register of the third respondent, wherein, it could be seen that the third respondent has completed her 12th standard and has been appointed to the post of Noon Meal Organiser on 11.02.2010 and her service has also been regularized from 10.02.2012 as per the proceedings in Na.Ka.No.1423/10/C5 dated 16.02.2012.

8. In view of the above, the petitioner's contention that the third respondent is not a widow and she is living with her husband and therefore, the petitioner is entitled to be considered for appointment to the said post cannot be accepted, as there was no specific order that the post is allotted for widow category. The third respondent who was selected for the post of Noon Meal Organiser has completed her 12th standard and has been appointed to the said post on 11.02.2010 and the said appointment has been regularized from 10.02.2012 and as per which, she has completed 8 years of service till date. Further, when the Government has taken a decision that higher qualified people could not be considered for the post of Noon Meal Organiser as they will leave the job once they get better job, the petitioner's representation dated 22.05.2010 was not considered by the respondent and had rejected her representation. Therefore, this Court is not inclined to interfere with the selection of the third respondent.

9. If the said post was allotted to a person who was not qualified to the post, then there can be a discrimination, but the third respondent being qualified for the post, the decision

of the second respondent not choosing a person who is widow and post graduate degree possessing over qualification for the post cannot be found fault with.

10. Hence, in view of the above facts, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Social Welfare,
Chepauk, Chennai - 5.

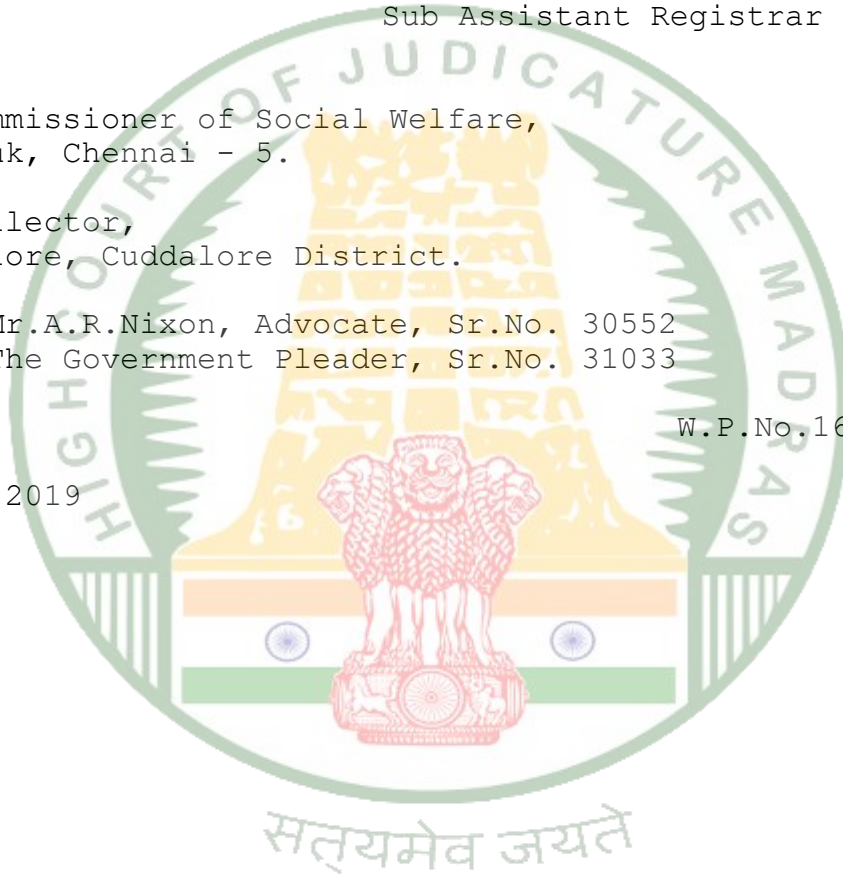
2. The Collector,
Cuddalore, Cuddalore District.

+1 cc to Mr.A.R.Nixon, Advocate, Sr.No. 30552

+1 cc to The Government Pleader, Sr.No. 31033

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BR(CO)
CSL/09.05.2019



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