

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.31639 of 2018
and
WMP.No.36879 of 2018

S.Latha

...Petitioner

Vs

1. The Commissioner,
Social welfare and Nutritious Meals Department,
Panagal Maligai, Saidapet,
Chennai - 600 015.
2. The District Collector,
Krishnagiri, Krishnagiri District.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the entire records which culminated in passing the order bearing reference Na.Ka.Pa.29605/2017/Ex1 dated 24.08.2018 of the 2nd respondent, and quash the same and consequently directing the respondents to consider the petitioner for compassionate appointment to the post of Noon Meals Organizer on the based of her educational qualification as per the Government letter Ms.No.86/Q.1/2010-12 Labour and Employment Department dated 04.05.2010.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.R.S.Selvam
Govt.Advocate for R1 & R2

O R D E R

The order of rejection dated 24.08.2018, rejecting the claim of the writ petitioner to appoint her to the post of Noon Meals Organizer on compassionate ground is under challenge in the present writ petition.

2. The mother of the writ petitioner was employed as Assistant Cook in the noon meal program at Government Girls Higher Secondary School and died on 23.02.2011, while she was in service. As the mother of the writ petitioner was a sole breadwinner of the family, the family was in penurious circumstances on account of sudden death. The writ petitioner submitted an application seeking appointment on compassionate grounds.

3. The learned Government Advocate appearing on behalf of the respondent states that, as per the Government orders, the writ petitioner was issued with an order of appointment in the post of Cook Assistant in proceeding Na.Ka.Pa.29605/2017/Ex1 dated 24.08.2018. In spite of the order of appointment issued in favour of the writ petitioner on compassionate grounds, she has not joined in the said post. Contrarily, the writ petitioner was of the opinion that, she participated in the process of interview for appointment to the post of Noon Meal Organizer on 09.05.2017 and therefore, she must be appointed to the post of Noon Meal Organizer on compassionate grounds.

4. Post can never be claimed as a matter of choice. The compassionate appointment is a special scheme. Scheme of compassionate appointment is a concession and thus, the same cannot be claimed as a matter of legal right. The appointment on compassionate ground must be provided in any one of the suitable post as per the availability of the vacancies in the particular department and certainly not at the choice of the person who is submitting application on compassionate grounds.

5. The learned counsel for the writ petitioner states that, the application seeking appointment to the post of Noon Meal Organizer is claimed by the writ petitioner based on the Government order. Even, in case of the Government order, the appointment on compassionate grounds must be provided in any one of the suitable post as per the scheme in general. The very purpose and object of the scheme is to mitigate the circumstances arising on account of the sudden death of the Government employee.

6. Thus, the scheme was implemented to save the family who all are in distress. Such being the very purpose and object of the scheme, the person who is submitting an application on compassionate grounds must accept the appointment, which all are provided at the first instance and if at all they want to secure higher post, they have to participate in the process of

selection or such higher posts are to be secure by way of promotion as per the rules in force. Contrarily, a person who is submitting an application seeking appointment on compassionate ground cannot say that as per the Government order, she is eligible for appointment to the post of noon meal organizer and only in the event of providing appointment to the post of noon meal organizer, she would be in a position to join duty. Such an adamancy if shown by the legal heirs of the deceased employee, the same cannot be encouraged by the Courts also. Courts are bound to see the purpose and object of the scheme itself.

7. The scheme of compassionate appointment is in violation of Article 14 and 16 of the Constitution of India. Equal opportunity in public employment is the Constitutional mandate. All appointments to the public post are to be done only under the Constitutional scheme and by following the principles and as per the recruitment rules. Large number of eligible youths of this Nation are aspiring to secure public employment through open competitive process. Equal opportunity must be provided in its real sense and in the event of expanding or enlarging the scope of such special schemes, the right of the eligible citizen are infringed.

8. In such circumstances, the Constitutional philosophy and ethos in providing equal opportunity is denied. Therefore, this Court is of an undoubted opinion that, the scheme of compassionate appointment is to be restricted to the extent possible so as to avoid much damage on constitutional principles, more specifically, the equality clause enunciated.

9. The present case on hand, admittedly, the order of appointment had already been issued in favour of the writ petitioner appointing her to the post of Cook Assistant in proceeding dated 17.01.2018, it is left open to the writ petitioner to accept the offer of appointment or reject the same at her choice. Contrarily, she cannot file a writ petition stating that, she had attended the interview for the post of Noon Meal Organizer and only in the event of providing an appointment to the noon meal organizer post, she would be in a position to join. Such an attitude of the unemployed youth can never be accepted and everybody who all are unemployed must enter into the public services at the first instance wherever and whatever provided and thereafter, they have to develop their career by their knowledge, education, skill and otherwise.

10. This being the legal principles to be followed, the writ petitioner is at liberty to accept the appointment already

issued or aspire for any other higher post only by participating in the selection process if any notification issued as per the law in force. Accordingly, the writ petition stands dismissed. No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pkn

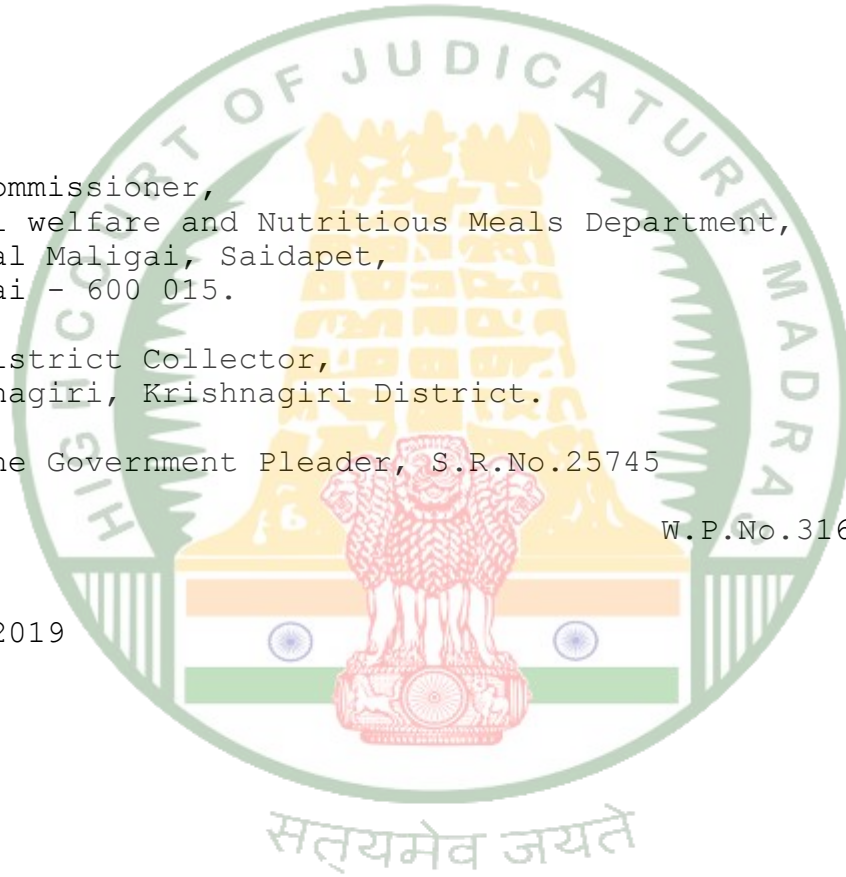
To

1. The Commissioner,
Social welfare and Nutritious Meals Department,
Panagal Maligai, Saidapet,
Chennai - 600 015.
2. The District Collector,
Krishnagiri, Krishnagiri District.

+1cc to the Government Pleader, S.R.No.25745

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GJII(CO)
CS/25/04/2019



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