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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.10.2021

DELIVERED ON: 02.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A.No.2705 of 2021
and C.M.P.No.16849 of 2021

S.Latha

...Appellant/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/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order passed by the learned Single Judge of this Court in W.P.No.31639 of 2018 dated 18.03.2019

Prayer in W.P.No.31639/2018 : Writ Petition filed under Article 226 of constitution of India calling for the records which culminated in passing the order bearing reference Na.Ka.Pa.29605/2017/Ex.1 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 basis 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 Appellant : Mr.V.Vijay Shankar
For Respondents : Mr.K.V.Sajeev Kumar for R1 and R2
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by R.Vijayakumar, J.)

The writ petitioner is the appellant herein. The writ petitioner's mother one Palaniammal, who was working as an



Assistant Cook in the Noon Meal Scheme had passed away on 23.02.2011 while in service. The writ petitioner being a daughter of the deceased palaniammal applied for appointing her in the Noon Meal Scheme on compassionate basis on 08.01.2014.

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2.The writ petitioner was appointed as an Assistant Cook by the second respondent on 17.01.2018. Thereafter, she was not satisfied with her appointment as an Assistant Cook and she wanted to be appointed as Noon Meal Organizer. Hence, she did not join the post. She sent a representation on 23.01.2018 to the second respondent to appoint her as a Noon Meal Organizer. Since the said application was not considered, she filed a writ petition in W.P.No.5940 of 2018. The said writ petition was disposed of on 27.07.2018 directing the Authorities to consider the representation of the petitioner.

3.The second respondent herein passed an order on 24.08.2018 rejecting the request of the writ petitioner on the ground that as per G.O.Ms.No.215 dated 08.09.1998 whenever an employee working in the Noon Meal Scheme had died while in service, the legal heir could be appointed only in the same post on compassionate appointment and not to a higher post. This order was challenged in the writ petition in W.P.No.31639 of 2018.

4.After hearing both the parties, the learned Single Judge has dismissed the writ petition on the ground that the writ petitioner has being appointed as an Assistant Cook on 17.01.2018 and it is left to the petitioner either to accept the appointment or reject the same. But she has no right to insist upon a higher post on the ground that she is having some higher qualification. This order is under challenge in the writ appeal.

5.Admittedly, the petitioner sent a representation to the second respondent herein on 08.01.2014 seeking compassionate appointment in the Noon Meal Scheme without specifying any post. The said application was accepted and she was appointed as an Assistant Cook on 17.01.2018. She has not chosen to join the said post but sent a representation seeking a higher post viz., Noon Meal Organizer on the ground that she is possessing better educational qualifications.

6.The learned counsel for the appellant contended that she was called for an interview by proceedings dated 09.05.2017 for appointment as Noon Meal Organizer through direct appointment. However, she was not appointed as Noon Meal Organizer but only appointed as an Assistant Cook.

7.The reading of the interview letter dated 09.05.2017 will clearly show that the interview was meant for direct recruitment for Noon Meal Organizer and it was not under the compassionate



appointment scheme. The said interview letter has no connection whatsoever with the appointment of the writ petitioner as an Assistant Cook on 17.01.2018 by the second respondent. In fact, the appointment of the writ petitioner as an Assistant Cook is based upon a representation given by the petitioner on 08.01.2014. Hence, the contention of the counsel for the appellant that the writ petitioner was called for an interview for the post of Noon Meal Organizer but appointed as a lesser post of Assistant Cook is not factually correct.

8.It is settled position of law that all appointments in public services should be made strictly on the basis of open invitation of applications and on merits. One of the exception is the compassionate appointment of the dependants of the employee of dying in harness and leaving his family in penury and without any means of livelihood. When such a humanitarian approach is adopted, as an exception to the general rule, the legal heir of the deceased employee cannot demand the post of her choice, especially a higher post than what was held by the deceased employee. If the petitioner is having any higher qualifications, it is always open to her, to apply along with others and secure a better employment. But in a case of compassionate appointment, she cannot pick and choose the post of her choice and demand it as a legal right to be appointed to the said higher post.

9.In a recent judgment dated 05.10.2021, the Hon'ble Apex Court in Civil Appeal No.6003 of 2021 in the case of State of Uttar Pradesh and Others vs. Premalatha has held as follows:

"In a given case it may happen that the dependent of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of ClassII or ClassI post and the deceased employee was working on the post of Class/Grade18 IV and/or lower than the post applied, in that case the dependent/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post. The aforesaid shall be contrary to the object and purpose of grant of appointment on compassionate ground which as observed hereinabove is to enable the family to tide over the sudden crisis on the death of the bread earner."

10.In view of the above said discussion and binding decision of the Hon'ble Supreme on this aspect, we do not find any ground to interfere in the order of the learned Single Judge. It is open to the petitioner either to accept the appointment order as



an Assistant Cook or to reject the same awaiting for a better post based upon her higher educational qualifications. Hence, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

pam

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 Mr.V.Vijayshankar, Advocate, Sr.No.57044
+1CC to Mr.Government Pleader, Sr.No.57681

Judgment in
W.A.No.2705 of 2021

SJ (CO)
K.RK. (24.11.2021)