



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.236 of 2013

and

M.P(MD)Nos.1 & 2 of 2013

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- 1.The District Collector,
Tirunelveli District,
Tirunelveli.
- 2.The Commissioner of Panchayat Union,
Palayamkottai,
Tirunelveli District.
- 3.The Personal Assistant to
Collector of Tirunelveli,
Noon Meal Scheme,
Tirunelveli District. ... Appellants / Respondents

Vs.

J.R.John Samuel Nallathambi,
Secertary,
Sri Siddhi Vinayagar Senthamizh Vidya
Salai Chatram Puthukulam,
Tirunelveli Taluk,
Tirunelveli District. ... Respondent / Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 17.10.2012 made in W.P(MD)No.8140 of 2012.

Prayer in WP(MD). 8140/ 2012 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Mandamus, directing the Respondent No.1 to appoint Ms.Petchiammal as
a cook in the Noon Meal Centre of the Petitioner s School
considering the Petitioner s representation dated 28.05.2012 and
pass such further or other orders.

For Appellants	: Mr.K.Chellapandian, Additional Advocate General Assisted by Mr.K.P.Narayanakumar, Special Government Pleader
For Respondent	: Mr.G.Prabhu Rajadurai



JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

This Writ Appeal is directed against the order dated 17.10.2012 passed in W.P(MD)No.8140 of 2012.

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2. A batch of writ petitions were filed challenging G.O.(Ms) No.163, Social Welfare and Nutritious Meal Program Department dated 18.09.2010. All the writ petitions were heard together and a common order was passed on 17.10.2012 allowing the writ petitions wherein the learned Single Judge held that a part of the said G.O., fixing additional qualification for consideration within three kilometers, is held to be ultra vires.

3. Aggrieved by the same, a batch of Writ appeals were filed by the Government and the said writ appeals were taken up for hearing along with connected writ petitions and a common judgment was delivered on 22.03.2017 allowing the writ appeals in W.A(MD)No.792 of 2012 etc. batch., and dismissing the writ petitions.

4. The present writ appeal is filed against the order passed in W.P(MD)No.8140 of 2012, wherein a Mandamus was sought for directing the appellants herein to appoint one Petchiammal as a Cook in the Noon Meal Centre of the respondent/petitioner school by considering the representation dated 28.05.2012.

5. A similar set of Writ Appeal in W.A(MD)No.107 of 2013 etc., batch were allowed by yet another Division Bench on 28.10.2020 following the earlier Division Bench order and the order of the learned Single Judge was set aside. It would be useful to extract Paragraph Nos.51 to 55 and 86 to 88 of the judgment in W.A(MD)No.792 of 2012 etc., batch:

"51. As rightly submitted by the learned Additional Advocate general, the role of Noon Meal Organizers in the entirety of the scheme is very important, as they are the ones who are responsible for the implementation of this noble scheme. They are the custodians of food commodities stored in the stock room. Meals have to be prepared by the cooks at the respective Centres everyday before 12.30 p.m., which has to be supervised by the Noon Meal Organizers and it is the duty of the Noon Meal Organiser to maintain the quality and quantity of the food provided to the children. Hence, a Noon Meal Organiser has to be present at the Centre all the time and that can be achieved only when the Noon Meal Organiser resides at the nearest possible place, preferably within three kilometers from the centre. Since the distance criterion as fixed in the G.O. is only with the object of achieving the goal of providing quality cooked food to the children under a



special scheme, the same cannot be held to be arbitrary or unconstitutional. In the State of Tamil Nadu, in every village and in most of the rural areas, there are centres providing cooked noon meals to school children. Hence, the women residing in the respective villages would get an opportunity of employment as Noon Meal Organizers and Cooks at such centres. Therefore, they will not be deprived of getting an opportunity of employment in the Centre located in their respective villages. Hence, in our considered view, particularly, having regard to the nature of employment under the special scheme being implemented by the Government, such a condition imposed in the impugned Government Order cannot be held to be violative of neither Article 14 nor Article 16 of the Constitution of India.

52. Moreover, it is not for the first time that the Government have stipulated the distance criterion by way of G.O.Ms.No.163 dated 18.8.2010. In fact, the issue has frequently been referred to the Government for necessary clarifications and in G.O.Ms.No.203, Social Welfare & Nutritious Meal Programme (Social Welfare-7) Department, dated 19.8.2005, the Government have issued such clarification. In the said Government Order, it has been pointed out that when appointments are made for Noon Meal Centres from a radius of 10 kilometers, much time is lost for the person so appointed to commute between such long distance and many a times such person does not turn up for duty, which has been noticed during surprise inspections by the officials. Further, if the person so appointed is not a resident of that village, he/she seeks transfer to a different panchayat/district and such matters are often litigated upto the High Court, which hampers the effective functioning of such noon meal centre. Taking into consideration such difficulties faced, the Government has issued the following clarifications in the aforesaid G.O.:-

(1) Wherever there is vacancy in any Noon Meal or Anganwadi Centre, eligible persons residing in the same hamlet should be appointed.

(2) Where qualified persons are unavailable in the hamlet, eligible persons from other neighbouring hamlets under the same village panchayat should be selected. If even such persons are not available, then qualified persons from other panchayats, not beyond the distance of 10 kilometers surrounding the said panchayat should be selected.

(3) As far as municipalities/corporations are concerned, eligible persons from the same Ward where there is a vacancy should be selected, and on the unavailability of



persons there, eligible persons from the nearby Ward should be considered, and if even such persons are not available, then persons from the same Division should be selected.

53. From the above, it is clear that the Government have tried its best to evolve a pragmatic solution while appointing Noon Meal Organisers from places nearer to the Noon Meal Centres, and the distance criterion has been rightly fixed taking into account the practical difficulties faced while appointing persons belonging to far off places.

54. Therefore, we are of the considered view that the writ Court has not considered the issue in its right perspective, and it has committed an error in law by quashing the said criteria fixed for appointment by G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department, dated 18.08.2010.

55. In view of our above decision, the validity of the said criteria (i.e., laying down other qualification of 3 Kms., distance) fixed for appointment by G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department, dated 18.08.2010 is upheld and the selection made pursuant to G.O.Ms.No.72, Social Welfare and Nutritious Meal Programme Department, dated 30.04.2012 is sustained.

86. In the light of the decisions and discussion, we hardly find any irrationality, arbitrariness or unreasonableness, behind the above stipulation made in G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011. According to us, there is basis for classification, reasonableness and clear nexus, between the classification and the object sought to be achieved. Legislature or the Government has a wide discretion in making the classification and the impugned G.O., does not reflect hostile discrimination against a class of persons. Therefore, G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011, imposing different procedure for appointment in the Nutritious Meal Centre of Government Aided Minority School and Nutritious Meal Centre of Government Aided Non-Minority School is not hit by Articles 14 or 16 of the Constitution of India.

87. Therefore, we are of the considered view that the writ Court has not considered the issue in its right perspective, and it has committed an error in law by quashing G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011.



88. In view of our above decision, the validity of the said criteria i.e. imposing different procedure for appointment for Government Aided Minority School and Government Aided Non-Minority School vide G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme Department, dated 06.01.2011 is upheld.''

6. The respondent has sought for a direction to appoint a Cook in the Noon-Meal Centre. In view of the earlier Division Bench order in W.A(MD)No.792 of 2012, dated 22.03.2017, no appointment is made till today.

7. In view of the above, this writ appeal stands allowed and the order of the learned Single Judge, is set aside insofar as the respondent/writ petitioner is concerned. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1.The District Collector,
Tirunelveli District, Tirunelveli.

2.The Commissioner of Panchayat Union,
Palayamkottai, Tirunelveli District.

3.The Personal Assistant to
Collector of Tirunelveli,
Noon Meal Scheme, Tirunelveli District.

+1 CC to M/s.SPL GP (SR-1995[F] dated 25/01/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-1899[F] dated 22/01/2021)

W.A(MD)No.236 of 2013
21.01.2021

MJ(CO)

KB(11.02.2021) 5P 6C