



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

CORAM:

THE HONOURABLE DR JUSTICE ANITA SUMANTH

W.P. (MD) No.10634 of 2018

and W.M.P (MD) No.9709 of 2018

WEB COPY

A.Sudhamathi

... Petitioner

Vs.

1.The District Collector,
Trichy,
Trichy District.

2.The Commissioner,
Panchayat Union,
Thuraiyur,
Trichy District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the second respondent to allot work to the petitioner and permithim to join as a Noon Meal Organizer in the Panchayat Union School, Thuraiyur, based on the appointment order passed by the first resondent in his proceedings in Se.Mu.No.Pa6/995/2016 dated 26.03.2018, within a stipulated time fixed by this Court.

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.Om Prakash
Government Advocate

O R D E R

The petitioner seeks a mandamus directing the Commissioner of Panchayat Union, Thuraiyur to allot work to her and to permit her to join duty as a Noon Meal Organizer in the Panchayat Union School at Thuraiyur.

2. The petitioner claims to have passed HSC in the year 2004, and had participated in the process of appointment for Noon Meal Organizer, attending the call for interview and producing all relevant documents. The process of selection was completed on 08.06.2017 by way of interview. On 26.03.2018, the petitioner received proceedings appointing her as Noon Meal Organizer and directing her to attend office within three (3) days.

3. It appears that in the interregnum, on 19.09.2021, the petitioner's husband had been appointed in a Government job as Teacher. On account of this and in pursuance of the policy of the State to the effect that only one person from a family can be



appointed to a Government post, the petitioner was not permitted to assume duty despite a valid appointment order in her favour. This is the trigger for the present mandamus.

4. The respondents have filed a counter, wherein, they seek to buttress their case stating that the petitioner has in fact completed her M.Sc., M.Ed., and was thus disqualified. This is an addition to their stand that her husband was already holding a Government job and thus only one person per family is entitled to be employed in a Government position.

5. As regards the latter contention, I reject the same straightaway as being devoid of any merit whatsoever. This very question had come up for consideration by this Court in W.P.No.4414 of 1985, wherein also the petitioners were appointees under the Noon Meal Scheme. The challenge in that writ petition was to the very Government Order relied upon by the State before me now, being G.O.Ms.No.33 dated 05.02.1983, which prescribes as one of criteria for appointment of Noon Meal Organizer, the condition that only one person can hold a Government job from a family.

6. This is what the learned single Judge has to say, while rejecting that contention outright.

3. Can a condition as envisaged in the order of the first respondent that any job under the Government of the State shall be given to only such a person in whose family there is no other person. employed, withstand the test of equal protection of law and equality before law as under Article 14 of the Constitution of India and equality of opportunity of employment as under Article 16 (1) of the Constitution, is the question that should not detain me beyond stating that exclusion of a person who is qualified and eligible for appointment in a service or post on a ground which is not based on any rationale and shows no nexus with the object to be achieved, viz., to have such persons who are eligible to work in such a post is/will be, per se unconstitutional. In *Minor Senthilkumar, K. v. The State of Tamil Nadu* (1991-1 L.W.113) the question how the concept of 'family' unless given a definition by a fiction created by law will be misleading and will not be a correct basis for a classification has been considered by this Court, first on a difference of opinion and final verdict by the learned third Judge and confirmed by the Supreme Court. In that judgment it has been pointed out:

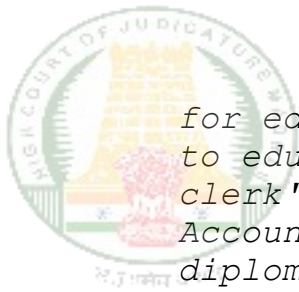
"The respondents have been aware of various definitions and meanings given to the term 'family' in different enactments. They knew that the term family is really one of great flexibility and is capable of many different meanings according to the context in which it is used and its



meaning may become narrow or broad depending upon the intentions of the Legislature or the context in which it is used. Courts have always held that it would neither be possible or desirable to permit a comprehensive formula or an exhaustive definition to indicate the meaning of the term 'family'. It may have therefore one meaning in a permissive society. It may have one meaning in a joint family and another in which every individual may constitute a separate family. A broad common sense view taken with due regard to the facts and circumstances of each case including the social order, the habits, "the customs and the ideas of living in the community alone can give a proper and reasonable understanding of the word 'family'. It appears from the impugned G.O. that an artificial meaning or definition has been introduced by saying that father, mother, brother and unmarried sister in addition to the applicant are considered as members of the family for this purpose. A brother may be married or unmarried may be a major or a minor. It is not difficult to understand that a brother dependent upon the parents like the applicant/candidate concerned may belong to the family. But it cannot be said with respect to a married brother or a major brother, who having become an adult and, entitled to have his own life and family decides to separate from his parents. Once separated from the joint family by express declaration to be away from the parents, if a Hindu, he would cease to be a member of the joint family of the parents and if a Mohamedan or a Christian, he would constitute a separate family for all practical purposes without even bothering for the incidence or consequence of a joint family or co-parcenary. Even father and mother of a candidate may not always be found together. Such elements of disenchantment between husband and wife which are common in permissive society have already intruded into our society and it is no longer a sin for a wife to live away from the husband" "or a husband to divorce his wife. A child may remain with the mother or father depending upon - they separate. the condition in which to live away from the son or daughter If one who has chosen who is seeking admission is graduate yet because he/she is born of him or her, he (?) shall be disqualified".

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"It is indeed curious why a child of a business magnate who is not graduate or there is no graduate member in his family, who is capable of sending his ward to any institute or institution in this country and abroad has been equated with the child of a peddler who is not a graduate and in whose family, there is no other graduate or a tiller of land or a peasant, who can hardly afford to move his child,



for education to any place unless some help is given to him to educate his child. How does this G.O. compare a graduate clerk's family with that of the family of a Chartered Accountant, who is not a graduate of a person who holds a diploma in Business Management and is the proprietor of a business firm or the Managing Director of a Company dealing in high stakes and earning beyond measure? A class, I have already noticed, is a homogeneous section of the people, grouped together because of certain likeness or common traits and who" of the first and second respondents respectively are wholly illegal and fit to be quashed. They are accordingly quashed. As a consequence thereof, respondents are restrained from removing the petitioners from their post for the reason as aforementioned. No costs "

The argument to the effect that the petitioner's eligibility becomes compromised by virtue of her husband holding a Government job, is thus rejected.

7. As regards the petitioner's educational qualifications, the learned counsel for the petitioner is unable to respond to this factual aspect straightaway. Be that as it may, the State cannot go back on an appointment order issued by it unless the such order is withdrawn on valid ground such as suppression of relevant facts by the candidate. This not having been done, this Writ Petition is allowed. All consequences be given to this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl side)

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/ /2022

Sub Assistant Registrar(CS)

CM

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,
Trichy,

<https://hcservices.tn.gov.in/hcservices/>



2.The Commissioner,
Panchayat Union,
Thuraiyur,
Trichy District.

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+1 CC to M/s.SPL GP (SR-37921[F] dated 09/12/2021)

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RK(10/02/2022) 5P 4C