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W.P.No. 15849 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 15849 of 2018

S. Baby

... Petitioner

Vs.

1. The District Collector,
Cuddalore District.

2. The Block Development Officer/Commissioner,
Panchayat Union Office,
Kammapuram Union,
Virudhachalam,
Cuddalore.

3. Mrs. Jothilakshmi

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in Proc.Na.Ka.Pidi. 1/296/2016 dated 11.06.2018 and quash the same and direct the first respondent to give effect to the first interview held on 24.02.2017 and appoint the petitioner as Noon Meal Organiser.



For Petitioner : Mr. R. Saseedharan
for Mr. M. Padmanaban
For Respondents : Mr. V. Arun
Additional Advocate General
Assisted by
Mr. R. Kumaravel
Additional Government Pleader
for R1
Mr. T. Arun Kumar
for R2
Mr. S. Vijayakumar
for Mr. K. N. Pandian
for R3

ORDER

The writ on hand has been instituted questioning the validity of the appointment of the third respondent to the post of Noon Meal Organiser.

2. The petitioner states that she had participated in the process of selection for appointment to the post of noon meal organizer in Cuddalore District. As per the guidelines issued by the Government, the candidates must reside within the radius of three kilometers from the Centre.

3. In the present case, the petitioner states that the third respondent is residing beyond the permissible limit as per the Government Orders and therefore the appointment of the third respondent is in violation of the Government guidelines issued.



4. The learned counsel for the petitioner mainly contended that the validity of G.O.Ms. No. 163 dated 18.08.2010 was upheld by the Hon'ble Division Bench of this Court and therefore the authorities competent are bound to follow the said Government order scrupulously while undertaking the process of selection for appointment to the post of noon meal organiser. It is contended that the third respondent is junior in age than the writ petitioner. Both the writ petitioner and the third respondent scored same marks in the interview and therefore the name of the petitioner ought to have been considered for selection and appointment to the post of noon meal organizer. For all these reasons, the order of appointment of the third is liable to be set aside.

5. The learned counsel appearing on behalf of the third respondent objected the said contention by stating that the criteria regarding the distance prescribed is unconstitutional. Based on the place or distance, no candidate can be selected to public post and thus the very prescription of distance in the Government order is in violation of Article 16 (2) of the Constitution of India.



6. It is further contended that the third respondent is a widow, having two children and working for the past about five years during the pendency of the writ petition. Thus, the appointment of the third respondent need not be interfered with and she may be allowed to continue in service. To substantiate the said contention, the learned counsel for the third respondent relied on the judgment of this Court dated 18.07.2007 in W.P.(MD) No. 4718 of 2007 wherein this Court held as follows:

'14. The question that arises for consideration is whether any preference based upon locality can be considered to the exclusion of other consideration by the Department.

15. As rightly contended by the official respondents, preferences based upon the locality is only a preference and not a basic qualification. If preference has been extended solely based upon the residence of a candidate, the same will be hit by Article 16(2) of the Constitution and Courts have frowned upon any preference being shown upon the locality.'

7. In W.P.(MD) No. 941 of 2014 dated 08.08.2019, this Court held as follows:

'4. Apart from this facts, the fifth respondent who was appointed as Mini Anganwadi Worker, is working for the past more than 5- ½ years. Thus, the said selection need not be settled after a lapse of many years. This apart, the writ petitioner has not established any malpractice, illegality or corrupt activities in the process of selection. In the



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absence of any such specific allegations, which is to be established in the claim of the writ petitioner, cannot be accepted.'

8. In respect of the above orders passed by this Court, the learned Additional Advocate General appearing on behalf of the first respondent raised an objection that the said orders are relating to G.O.Ms.No. 110 dated 14.05.2012, which is not connected with the post of noon meal organiser and thus the said judgment cannot be relied upon.

9. Thirdly the learned counsel for the third respondent relied on the judgment of the Hon'ble Division Bench of this Court dated 02.03.2011 in W.P.(MD) No. 966 of 2010, wherein the following observations are made

'6. It is well settled position that the appointment of Anganwadi worker which is a public employment, cannot be based on the residence of the candidate. However, in the instant case, it is seen from the file produced by the second respondent, in the remarks column, it has been noted parallel to the name of the petitioner that she belongs to local place(csSh;;). The issue regarding preference based on the village was already considered by this Court in the decision reported in 2007(6) MLJ 402 (P.Vasantha and



others Vs.The District Collector, Dindigul District, Dindigul and others) wherein it is held that giving of such preference based on residents is in violation of [Article 16\(2\)](#) of the Constitution. In Paragraphs 17 and 18, it is held thus:

"17.Therefore, if the contentions of the petitioners is to be accepted then the preference should be given solely on the basis of the residence, and that will be hit by [Article 16\(2\)](#) of the Constitution. However, considering the fact that the post requires constant attention towards the children and the availability of the person in a nearby area is preferable and a proximity of distance by the eligible candidates may be constitutionally permissible but the selection cannot be solely on the ground of residential preferences to the exclusion of other criteria has to be accepted as it will hit [Article 16\(2\)](#) of the Constitution. As rightly contended by the official respondents, the proximity of residence/locality is only a preference and not a



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qualification by itself. Once it is established that none of the selected candidates are otherwise disqualified they cannot be edged out of consideration only on the ground that they were not being the residents of the locality.

18.Further, preferring a candidate from a particular hamlet to the exclusion of candidates from other hamlets in the same Village Panchayat Union or in respect of Panchayat Union Centres preferring the candidates from only one village to the exclusion of other villages living in the same panchayat union may also be arbitrary and in many times, it may also result in violating the communal roster being followed". The said order was approved by the Division Bench in W.A.No.1707/2009 by the Division Bench (HLG,CJ and NPVJ) by judgment dated 01.12.2009. Hence, the action of the respondents 1 and 2 in selecting the third respondent only on the basis of her residential



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parameter without having any other distinguishing factor is definitely in violation of the constitutional provision contained in [Article 16\(2\)](#) of the Constitution of India.

7. Under such circumstances, we are not inclined to accept the submission made by the learned Government Advocate since the petitioner was residing 3 kms away from the place where the Anganwadi Centre is situated she is not eligible for the post. Hence, we are of the opinion, the impugned order is liable to be set aside and accordingly, the same is set aside. The respondents are directed to consider the case of the appellant and the 3rd respondent by affording them opportunity of hearing for the appointment to the post of Mini Angawadi worker at Sethambal Centre, in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

10. Relying on the above orders passed by this Court, the learned counsel for the third respondent reiterated that the distance criteria is in violation of Article 16 (2) of the Constitution of India and therefore, based



on the distance, no candidate can be denied appointment to a post for which such candidate is otherwise eligible and qualified.

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11. The learned Additional Advocate General appearing on behalf of the State made a submission that pursuant to the interim direction issued by this Court initially measurement was taken by the competent authorities by affording opportunity to the petitioner and the third respondent. Even as per the initial management, the third respondent is residing beyond the radius of three kilometers. However, there was discrepancy pointed out by the Court, regarding the measurement taken by the two different authorities and therefore this Court directed the P.A. to District Collector to take independent measurement with the assistance of qualified engineers so as to give quietus to the dispute in this regard. Pursuant to the directions of this Court, Mr.X. Jerome Anand, PA. to Collector, measured the distance between the centre and the residence of the third respondent with the assistance of the Assistant Executive Engineer and accordingly filed additional affidavit along with the files and was present before this Court. As per the said measurement, the third respondent Mrs. Jyothilakshmi is residing at the distance of 3.62 kilometres from the center. The photographs showing the GPS measurement taken is also enclosed along with affidavit.



Thus, the said measurement is to be treated as final for the purpose of considering the issues. It is not in dispute now that the third respondent is residing beyond the radius of three kilometer. Therefore, it is in violation of the guidelines issued in G.O.Ms. No. 163 dated 18.08.2010.

12. The learned Additional Advocate General further contended that the petitioner and the third respondent secured same marks i.e. 30 marks. The marks statement furnished by the third respondent would reveal that both the petitioner and the third respondent secured 30 marks and the date of birth of the petitioner is 05.05.1979 and the date of birth of the third respondent Shri Jyotilakshmi is 21.04.1988. Therefore, the petitioner is senior to the third respondent in age.

13. Considering the arguments, the primary issue to be considered is that whether prescription of distance criteria by the Government for selection and appointment to the post of noon meal organiser is in violation of Article 16 (2) of the Constitution of India or not. Article 16(2) contemplates “no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the



State.” Question arises whether there is total prohibition of the candidates from participating in the process of selection. It is not in dispute that there is no total prohibition merely on the ground of distance. However, the distance has been prescribed with reference to the center in which the selection is to be made. In this context, the purpose and object of the distance prescribed is to be considered and further the post of noon meal organiser is to be filled up only by women candidates and therefore it is relevant to consider Article 15 sub clause 3 of the Constitution of India.

14. In the context of the facts and circumstances, Article 15 (3) contemplates that “Nothing in this article shall prevent the State from making any special provision for women and children”. Therefore, the State is empowered to make law by way of a special provision for the benefit of women and children.

15. In the present case, the post of noon meal organizer is filled up only through women candidates and they have to maintain the children in the center. Thus, women candidates alone are preferred. The prescription of criteria to appoint women candidate cannot be construed as violative of the constitutional provisions as the State is empowered to make special



provisions.

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16. The criteria of distance is fixed to take care of the children, in a more comfortable manner, as an appointed candidate from a far away place may not be in a position to attend the center during morning or evening hours and considering various other mitigating factors, the State prescribed distance criteria

17. Again such criteria has been fixed in order to give priority to the women candidates, who are all residing in a particular area and the provisions extended to all over the State of Tamil Nadu and therefore this cannot be held as unconstitutional and violative of Article 16(2) of the Constitution of India. In this context, the Hon'ble Division Bench of this Court in a batch of writ appeals in W.A. (MD) No, 107 of 2013 etc. batch dated 28.10.2020, considered the validity of Government order issued in G.O.Ms. No. 163, Social Welfare and Nutritious Meal Program (NMP) Department, dated 18.09.2010, relying on the earlier judgement of the Hon'ble Division Bench in W.A.(MD) No. 792 of 2012 etc. batch in the case of *The Secretary to Government of Tamil Nadu, Social Welfare and Nutritious Meals Department, Chennai and Others vs M.Muthulakshmi*



and another. The Hon'ble Division Bench held that there is no impediment for the State to prescribe such distance criteria more specifically, for selection and appointment to the post of noon meal organiser Angavadi worker etc and thus the G.O in this regard was already upheld by a Hon'ble Division Bench of this Court. The earlier judgement of the Hon'ble Division Bench in W.A. (MD) No. 792 of 2012 etc batch the court made the following observations:

"6. In W.A.(MD)No.792 of 2012 etc. batch [The Secretary to Government of Tamil Nadu, Social Welfare and Nutritious Meals Department, Chennai and others Vs. M.Muthulakshmi and another], a Division Bench of this Court, after hearing the parties, vide judgment, dated 22.03.2017, allowed the writ appeals, setting aside the order of the learned Single Judge and upheld the validity of G.O.(Ms)No.163, Social Welfare and Nutritious Meal Program Department, dated 18.09.2010 and G.O.(Ms)No.4, Social Welfare and Nutritious Meal Program (NMP) Department, dated 06.01.2011. Paragraphs 51 to 55 and 86 to 88 of the said judgment [cited supra] are squarely applicable to the facts of the present cases. At this juncture, it would be worthwhile to quote the said



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paragraphs, which read as under:-

"51. As rightly submitted by the learned Additional Advocate General, the role of Noon Meal Organisers 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 Organisers 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



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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 Organisers 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



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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



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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



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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



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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,



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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 W.A.(MD)Nos.107 of 2013 etc., 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



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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."

7.Mr.A.Saravanan, learned counsel appearing for the respondent in W.A.(MD)No.113 of 2013 would submit that the respondent's appointment was cancelled based on the ground that she has suppressed the distance between her residence viz., Thirukanai and the place of appointment viz., Angadimangalam. According to the show cause notice, it is 23 Kilometers between her residence and the place of appointment.

8.Though the learned counsel appearing for the respondent / writ petitioner would submit that the respondent's appointment was made on 13.07.2012, she has not explained as to when she



got married to a person, who is residing in Angadimangalam, to which place, she was appointed. In view of suppression of distance between Angadimangalam and Thirukanai, which is the place of birth of the respondent/writ petitioner, the order of appointment is liable to be set aside. Therefore, the order, allowing the writ petition in W.P.(MD)No.11628 of 2012 filed by the respondent/writ petitioner, is liable to be set aside and accordingly, the same is set aside.

18. The learned counsel for the third respondent referred an order, which is not connected with the G.O.Ms. No. 163, dated 18.08.2010, which is relevant for the purpose of appointment to the post of noon meal organizer. Thus, the said orders relied on are of no avail to the third respondent. However, the Hon'ble Division Bench of this court has upheld the validity of the Government Order issued in G.O.Ms. No. 163 dated 18.08.2010 and another Hon'ble Division Bench also followed the said judgment and held that such criteria fixed has got nexus between the objects are to be achieved and therefore it cannot be held as unconstitutional. That apart, the noon meal centers are to be maintained by the person who is residing in a nearby place. The candidate residing in a far away place may



not be in a position to maintain the noon meal centers in an effective manner. Considering all these mitigating factors, the Government fixed the criteria of distance and accordingly issued notification. This being the factum, the contention raised on behalf of the third respondent deserves no merit consideration. As far as the case on hand is concerned, the third respondent residing beyond the radius of three kilometers and therefore in violation of the Government guidelines issued in G.O.Ms.No. 163 dated 18.08.2010. That apart, the petitioner and the third respondent scored same marks of 30. In such circumstances, the date of birth is to be the criteria for selecting a candidate. The petitioner is senior in age than the third respondent and thus the selection of third respondent is in violation of the Government guidelines issued. Accordingly, the writ petition is to be considered. In view of the fact and circumstances, the order of the first respondent in proceedings in Proc.Na.Ka.Pidi. 1/296/2016 dated 11.06.2018 is quashed and the respondents 1 and 2 are directed to conduct a fresh selection for appointment to the post of noon meal organizer as expeditiously as possible.



19. With this direction, the writ petition stands allowed. Until an in-charge is posted in the noon meal center, the appointment of the third respondent need not be disturbed. No costs.

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Index : Yes / No

Speaking order / Non-Speaking order

To

1. The District Collector,
Cuddalore District.
2. The Block Development Officer/Commissioner,
Panchayat Union Office,
Kammapuram Union,
Virudhachalam,
Cuddalore.



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