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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.NO.2199 OF 2021

M.Thamarai Selvi

... Appellant/Petitioner

Versus

The District Collector,
Krishnagiri District,
Collectorate,
Krishnagiri.

... Respondent/Respondent

PRAYER:-

Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the common order passed by the learned Judge in W.P.No.21399 of 2018 dated 10.04.2019.

PRAYER IN W.P.NO.21399 OF 2018:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.27907/2015/X1 dated 05.04.2018 on the file of the respondent and quash the same consequently direct the respondent to give appointment to the petitioner as Noon - Meal Organizer on priority basis without reference to the conditions of upper age limit and distance of residence within a reasonable time.

For Appellant : Mr.C.Mahendran

For Respondent : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader



J U D G E M E N T

J.SATHYA NARAYANA PRASAD, J.

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The present Writ Appeal is directed against the order passed by the learned Single Judge in W.P.No.21399 of 2018 dated 10.04.2019, dismissing the said writ petition.

2. Heard Mr.C.Mahendran, learned counsel for the appellant and Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader appearing for the respondent.

3. The brief facts of the case are as follows:

The appellant was initially appointed as Coordinator in Adult Literacy Programme, by the respondent under 'Education Development Scheme' implemented by the Government of Tamil Nadu and continued to work in the said post for several years without any break. She was ousted from service in the year 2010 since there was no vacancy of the post. Then, the Block Development Officer sent a proposal to the respondent to consider the appellant for appointment to the post of 'Noon Meal Organizer', however, the same was not considered. Hence, the appellant filed a writ petition in W.P.No.30061 of 2015 before this Court and the same was disposed of with a direction to the respondent to consider the appellant's request. Despite the aforesaid direction given by this Court in W.P.No.30061 of 2015, the respondent vide proceedings dated 16.02.2015 rejected the request of the appellant on the ground that she did not work in Noon Meal Centre and the appointment of Noon Meal Organizer can be made only as per G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme (NMP-2) dated 18.08.2010.

3.1. In the meantime, this Court vide common judgement dated 25.07.2017, disposed of a batch of writ appeals filed in W.A.Nos.1407 to 1411 of 2016 (including the writ appeal in W.A.No.1408 of 2016 filed by the appellant herein). The operative portion of the said judgment reads as follows:

"2. The issue pertains to the appointment to the post of Noon Meal Organizer. In the counter affidavit filed by the first respondent, it has been stated that the procedure contemplated in G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department dated 18.08.2010 had to be rightly followed without any deviation in the appointment to the post of Noon Meal Organizer. It is also stated that it is a matter of Government Policy while considering the absorption to



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Government post. But there is no provision in the said Government Order to consider the cases of similarly ousted persons, like the appellants, for the post of Noon Meal Organizer. When this is the stand of the Government, the appellants have sought for a common relief to consider them for the post of Noon Meal Organizer based on their previous employment. In this regard, we only observe that if it is otherwise possible to accommodate them, in continuation thereof, pursuant to the Government Order, the cases of the appellants may be considered by the respondent authority. Accordingly, the writ appeals are disposed of."

3.2. Then, the respondent vide proceedings in Na.Ka.No.27907/2015/X1 dated 05.04.2018 informing the appellant that if she applies to the post of Noon Meal Organizer, it would be considered in accordance with Government Order in G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme (NMP-2) dated 18.08.2010. Challenging the said proceedings of the respondent, the appellant and the other similarly placed persons have filed a writ petition in W.P.No.21399 of 2018 before this Court and the same was dismissed on 10.04.2019, as against which, the appellant preferred the present writ appeal.

4. The main contention of the appellant is that she is entitled to be appointed as Noon Meal Organizer on priority basis without reference to the conditions of upper age limit and distance of residence within a reasonable time to be fixed, but, her contention was rejected on the ground that she is not eligible to the post of Noon Meal Organizer.

5. The appointment per se, cannot be claimed as a matter of right. All the appointments are to be made strictly in accordance with the Recruitment Rules in force. However, equal opportunity in participation is the Constitutional requirement and accordingly, all the eligible persons who all are aspiring to secure employment must be permitted to participate in the process of selection, which is to be conducted in accordance with the procedures contemplated in the Rules. If at all, the appellant is fully qualified as per the Rules in force, she would have got an opportunity to participate in the process of selection. However, without participating in the process of selection, the appellant cannot seek an appointment to a particular post, namely, Noon Meal Organizer.

6. In the case of Zhoor Ahmad Rather & Ors. Vs. Sheik Imtiyaz Ahmad & Ors reported in 2019 (2) SCC 404, the Honourable Supreme Court held as follows:



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"26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L & S) 664] in the subsequent decision in Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L & S) 329]. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L & S) 664] turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L & S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench (Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No.135 of 2017, decided on 12.10.2017 (J & K) of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J & K, 2017 SCC Online J & K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No.135 of 2017, decided on 12.10.2017 (J & K)] of the Division Bench."

7. The Honourable Apex Court in unambiguous terms reiterated that the State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of the qualification is not a matter which can be determined in



exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine.

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8. It is made clear that it is the prerogative of the Authorities Competent to prescribe the conditions of service and the qualifications, age limit, etc., for recruitment to a particular post or cadre. The judicial review against such decisions taken by the Authorities Competent are certainly limited. Only, if the qualifications prescribed by the Authorities Competent are unconstitutional or in violation of the Statutory provisions, then alone the High Courts can exercise the power of judicial review and not otherwise.

9. This Court while dealing with a similar case in a batch of Writ Appeals filed in W.A.Nos.2850, 2851, 2854, 2856 & 2858 of 2019, the Division Bench of this Court held as follows:

"16. We are of the view, the appellants cannot seek preferential right in the regular recruitment process merely because they have worked on an earlier occasion on temporary basis as co-ordinators under the "Growing Education Scheme" (Valar Kalvi Thittam). At the same time, the appellants appear to have put in service for a period over 7 years. Therefore, the period served by the appellants under the aforesaid scheme can be considered favourably in their favour by relaxing the age limit prescribed under G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme (NMP-2) dated 18.08.2010. The State Government of Tamil Nadu may therefore examine the same and issue suitable amendment to the said G.O. as the appellants can hardly be blamed for the delay in initiation of the recruitment process.

17. The respondent may therefore consider the appellants for appointment as Noon-Meal Organizers as and when such a G.O. is issued amending the parent G.O. considering the fact that the appellants have worked as co-ordinators on temporary basis since 2003 upto 2010."

10. The learned Single Judge considering all the facts and circumstances of the case, relying on the judgment of the Honourable Apex Court, rightly dismissed the writ petition.

11. In view of the aforesaid decisions of the Honourable Apex Court as well as the Division Bench of this Court, we do not find any ground to interfere with the order passed by the



learned Single Judge. The Writ Appeal is devoid of merits and the same is liable to be dismissed.

12. Accordingly, the Writ Appeal is dismissed and the order passed by the learned Single Judge in W.P.No.21399 of 2018 dated 10.04.2019 is confirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrr

To

The District Collector,
Krishnagiri District,
Collectorate,
Krishnagiri.

Copy To:-

The Secretary to Government,
The Department of Social Welfare and
Nutritious Meal Programme,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.C.Mahendran, Advocate, S.R.No.4418
+1cc to the Government Pleader, S.R.No.4762

W.A.NO.2199 OF 2021

NRL(CO)
PBS/09/02/2022