



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.18695 of 2016

WEB COPY

M.Jeyam

... Petitioner

vs.

1.The Secretary to Government,
Social Welfare and Nutritious Meal
Programme Department,
Secretariat, Chennai- 600 009.

2.The Commissioner of Social Welfare and Nutritious
Meal Programme,
SIDCO Complex, 2nd Floor,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 600 032.

... Respondents

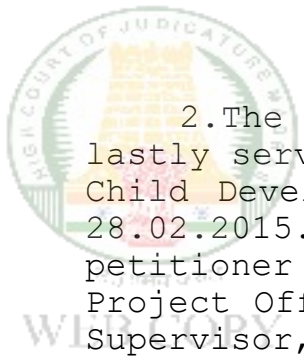
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent, i.e., the Commissioner of Social Welfare, Chennai, relating to his நக.எண்.23261/நிர்.3(5)/2016, நாள்: 10.08.2016 and to quash the same and consequently, to direct the respondents to promote the petitioner notionally as Child Development Project Officer on par with her junior and send revised pension proposals to the Accountant General, Chennai, within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This Writ Petition is filed to quash the impugned order passed in நக.எண்.23261/நிர்.3(5)/2016, நாள்: 10.08.2016 and consequently, to direct the respondents to promote the petitioner notionally as Child Development Project Officer on par with her junior and send revised pension proposals to the Accountant General, Chennai.



2.The brief facts of the case are that the petitioner was lastly serving as Grade I Supervisor in the Office of the Integrated Child Development Service, Kangeyam and attained superannuation on 28.02.2015. The contention of the petitioner is that while the petitioner was in service, he was not promoted as Child Development Project Officer. According to the seniority in the cadre of Grade I Supervisor, which is a feeder category for the said post, in the Grade of Supervisor, the petitioner's seniority was 373 of the year 1992 and the seniority of one Valliammal was 388. According to the petitioner, the said Valliammal and others were all juniors to him, but were promoted as Child Development Project Officer as per G.O. (3D)No.03, Social Welfare and Nutritious Meal Programme, Chennai, dated 28.02.2011. Without considering the seniority in the feeder category, the said Valliammal was in Serial No.348 and the petitioner's Serial Number was in 333 in the Supervisor Grade I list published in the year 2002. But, the Valliammal was promoted and the petitioner's name was omitted. The petitioner preferred an appeal to the Secretary to the Government through proper channel on 03.03.2011. The petitioner's application was also forwarded by the District Project Officer, Tiurppur, to the then Director of Social Welfare, Chennai, vide letter, dated 32901/11, dated 03.03.2011.

3. The contention of the petitioner is that the application was not considered within time, in spite of several repeated oral representations till the date of superannuation. Hence, the petitioner preferred a Writ Petition in W.P. (MD) No. 11716 of 2016, praying for direct the respondents to consider and pass orders. In the appeal, this Court has directed the respondents to pass orders within a period of four weeks from the date of receipt of the order. The second respondent rejected the appeal on the ground that the appeal is based on the earlier decisions of this Court in W.P. (MD) No.16944 to 16948 of 2014, dated 17.10.2014. Challenging the orders passed by the Commissioner of Social Welfare, Chennai, in his proceedings, dated 10.08.2016, the petitioner preferred the present Writ Petition.

4. The second respondent filed a counter affidavit stating that the petitioner has approached this Court belatedly that too after retirement. The petitioner has challenged the impugned G.O., dated 28.02.2011 and has filed the Writ Petition in W.P.(MD)No.11716 of 2016, to consider the appeal. The contention of the second respondent is that the statement that the petitioner preferred appeal against the non-inclusion in the panel in the year 2011 is denied as false and no records are available. Apart from that, there was a fire accident which engulfed the records and the records relating to the petitioner's appeal is not available. The petitioner was silent from 2011 to 2015 and has not knocked the door of the Court belatedly. Hence, the second respondent prayed to dismissed the Writ Petition.



5.Heard Mr.S.Visvalingam, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

6.The contention of the petitioner is that she was in the seniority list as Serial No.333 in the year 2002. The petitioner is comparing with one Valliammal, whose seniority was 348 and she was granted promotion through G.O.(3D)No.03, Social Welfare and Nutritious Meal Programme, Chennai, dated 28.02.2011. The petitioner submitted an appeal on 03.03.2011 through proper channel. The proper channel being the District Project Officer. The District Project Officer in Letter No.32901 of 2011, dated 03.03.2011, has forwarded the petitioner's application.

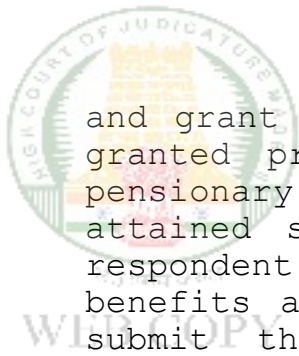
7.The contention of the respondents is that there was a fire accident in the respondents' Office. Therefore, the petitioner's appeal was not available. If that is so, the reason stated in the impugned order that the petitioner has submitted belated application cannot be accepted.

8.The learned Special Government Pleader appearing for the respondents submitted that the petitioner has not come forward to file any Writ Petition from the year 2011 to 2015. But has filed this Writ Petition belatedly and the appeal is also belated and cannot be accepted. The learned Government Pleader also submitted that after retirement the petitioner is claiming promotion.

9.This Court is not convinced by the arguments of the learned Special Government Pleader appearing for the respondents. Since the petitioner has already submitted within three days from the date of the impugned G.O., which was passed on 28.02.2011, the petitioner's claim is within time. The impugned order is not stating the earlier application submitted by the petitioner. The petitioner was directed to submit a new application. The petitioner submitted the new application and that was taken into consideration. The respondents are stating that the application is belated. The respondents failed to consider the original application which was engulfed in fire.

10.The learned Special Government Pleader appearing for the respondents submitted that the jurisdiction lies before the Principal Bench, since the petitioner was serving in Kangeyam and the orders are passed by the authorities at Chennai. On perusal it is seen that the last impugned order was passed and issued to the petitioner to his Ramanathapuram address. Therefore, this Court has jurisdiction and the argument of the learned Special Government Pleader is rejected.

11.Therefore, this Court is of the considered opinion that the petitioner is entitled to promotion. Therefore, the respondents are directed to place the petitioner's name above the said Valliammal



and grant promotion on the same date when the said Valliammal was granted promotion, thereafter, confer all monetary benefits and pensionary benefits from that date onwards. The petitioner has attained superannuation and has retired from service. The first respondent is directed to submit the proposal for pensionary benefits after granting promotion. The petitioner is directed to submit the entire service records to the first and second respondents along with a copy of this order. Thereafter, the second respondent is directed to pass orders within a period of 8 weeks from the date of receipt of a copy of this order. Thereafter, the first respondent shall pass an order within a period of eight weeks.

12. With the above direction, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

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 Secretary to Government,
Social Welfare and Nutritious Meal
Programme Department,
Secretariat, Chennai- 600 009.

2. The Commissioner of Social Welfare and Nutritious
Meal Programme,
SIDCO Complex, 2nd Floor,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 600 032.

+1 CC to M/s.SPL.GP. (SR-18557[F] dated 13/04/2022)

+1 CC to M/s.S. VISVALINGAM, Advocate (SR-19077[F] dated 18/04/2022

ORDER MADE IN
W.P. (MD) No.18695 of 2016
12.04.2022

PKP/01.06.2022/4P/5C

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