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W.P.No.12344 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 12344 of 2016

and

W.N.P.No.10682 of 2016

M.Prema

... Petitioner

Versus

1.The District Collector,
Tiruvannamalai District Nutrition Noon Meals Project,
Collectorate,
Tiruvannamalai Town and District-606 604.

2.The Commissioner,
Vembakkam Panchayat Union,
Vembakkam Town and Taluk,
Tiruvannamalai District-604 410.

3.S.Kavitha

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondents 1 and 2 herein and quash the impugned order of Appointment passed by the first respondent herein in his Na.Ka.No.10791/2014/Sa.Vu.Thi-1, dated 29.02.2016 in favour of the third respondent herein and consequently appoint the petitioner herein as the Organizer in the Puratchithalaivar M.G.R Nutrition Noon Meals Center situated at the Panchayat Union Elementary School, Kakanam Village,



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Vembakkam Taluk, within Vembakkam Panchayat Union Limit in
Tiruvannamalai District with immediate effect.

For Petitioner : M/s.V.Ramana Reddy

For Respondents 1 t& 2 : Mr.V.Arun
Additional Advocate General
Assisted by Mr.R.Kumaravel
Additional Government Pleader

For Respondent 3 : Mr.S.Muthu Kumar

ORDER

This writ petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, calling for the records of the Respondents 1 and 2 herein and quash the impugned order of Appointment passed by the first respondent herein in his Na.Ka.No.10791/2014/Sa.Vu.Thi-1, dated 29.02.2016 in favour of the third respondent herein and consequently appoint the petitioner herein as the Organizer in the Puratchithalaivar M.G.R Nutrition Noon Meals Center situated at the Panchayat Union Elementary School, Kakanam Village, Vembakkam Taluk, within Vembakkam Panchayat Union Limit in Tiruvannamalai District with immediate effect.



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2. The case of the petitioner is that she was qualified and also falling within the requirements of the respondents for being appointed as Organizer at the Noon Meal Scheme Centre. In fact, the petitioner was placed at Sl.No.1 in the priority list for selection. However, the 1st respondent unilaterally called upon the 3rd respondent and issued an appointment order. It is the case of the writ petitioner that the 3rd respondent was more than 3 km away from the Nutrition Noon Meal Center and she was also assigned lesser rank in the official selection list. Challenging the appointment of the 3rd respondent as the Organizer of the Nutrition Noon Meal Center, the petitioner has raised several grounds in the writ petition and sought for issuance of a writ of Certiorari filed Mandamus. Pending the above writ petition, after the counter affidavit came to be filed by the 2nd respondent, an additional counter affidavit came to be filed by the 2nd respondent with regard to the distance factor with specific reference to the petitioner as well as to the 3rd respondent. It is seen from the additional counter affidavit that the petitioner has obtained 25 marks and she resides within 0.2 km from the Noon Meal Center. In so far as the 3rd respondent is concerned, it is seen that she has obtained 30 marks and resided approximately 3.98 km away from the Noon Meal Center.



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3. Heard the learned counsel for the petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents 1 and 2 and the learned counsel for the 3rd respondent.

4. This Court perused the documents annexed in the typed set and also the relevant G.O.s and orders of this Court as well as the Madurai Bench of this Court and typed set filed by the 2nd respondent. The certificate dated 20.07.2022 in Na.Ka.No.V/A6/1019/2016 issued by the Commissioner, Panchayat Union Vembakkam confirms the distance between the petitioner's residence and the Noon Meal Center as well as the 3rd respondent's residence from the Noon Meal Center. One of the essential qualifications for being appointed as the Organizer in the Noon Meal Center is that the candidate should reside within 3kms distance from the Noon Meal Center. In this regard, the petitioner admittedly, qualifies for the same. However, the 3rd respondent, who has been appointed does not qualify for being appointed. However, the learned counsel for the 3rd respondent would submit that the 3rd respondent has obtained more marks than the writ petitioner and therefore, the appointment of the 3rd respondent cannot be called in question merely because she resides approximately 4km away from the Noon Meal Center.



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5. The learned Additional Advocate General referred to decision of this Court in W.P.No.33955/2016 dated 15.09.2022 with regard to the corrections in the mark sheet. No doubt, the 3rd respondent has qualified with more marks than the writ petitioner. However, it is seen from the mark sheet, there are several corrections with respect to the marks of the 3rd respondent. This Court, in the above mentioned writ petition, set aside the appointment made by the respondents 1 and 2 and ordered fresh recruitment process to be followed as contemplated under Recruitment Rules. Coming to the facts of present case, admittedly the petitioner was qualified in so far as the distance between her residence and the Noon Meal Center concerned. However, with regard to the marks obtained even if the 3rd respondent's case cannot be considered on the ground of distance, there is one another person at Sl.No.8 namely P.Gayathri, who has obtained more marks than the writ petitioner. However, it is not known as to the distance between the said P.Gayathri's residence and the Noon Meal Center. One another factor which goes against the writ petitioner is that the condition for being appointed to the post of Organizer at any Noon Meal Center as per G.O.Ms.No.163, Social Welfare and Noon Meal Department, dated 18.08.2010 is that the candidate should be between 21 and 40 years. The writ petitioner was aged



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38 years even when she was approached this Court in 2018 and admittedly, now she has crossed the age of 40. The writ petitioner has not obtained any interim order at the time of admission of the writ petition to enable her to get the period lost in prosecuting the writ petition. Therefore, there is no useful purpose in directing the authorities to appoint the writ petitioner as it is impermissible, even if the petitioner qualified in so far as one of the conditions namely distance between the petitioner's residence and the Noon Meal Center. However, at the same time, this Court having found that the appointment of the 3rd respondent is improper and in by order 23.08.2022, this Court has also recorded that the 3rd respondent does not qualify for the appointment to the post since she resides 3.98 kms away from the center.

6. In such view of the matter, the impugned order is partly set aside in so far as the appointment of the 3rd respondent is concerned. The 1st and 2nd respondents shall follow the procedure and fill up the post by way of fresh recruitment as per the Recruitment Rules. However, from the initial period till the exercise completed by the 1st and 2nd respondents, the 3rd respondent shall continue to hold her post as Organizer in the Noon Meal Center. With these observations, this petition is dismissed.



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7. The writ petitioner was directed to produce an interest fetching fixed deposit receipt of Rs.5000/- from any Nationalized Bank in Chennai in the name of the Registrar-General, Madras High Court, Chennai to show her *bonafides*. The interim order passed by this Court was complied with and the amount was deposited by way of Fixed Deposit Receipt Indian Bank, Madras High Court, Branch vide TDR No.T20/MTDD 0033292 dated 02.08.2022.

8. In view of the orders passed today, the Registrar-General may take necessary steps to encash the Fixed Deposit receipt and refund the amount together with interest accrued to the writ petitioner.

9. In view of the above, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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P.B.BALAJI, J.,

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To

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- 2.The Commissioner,
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