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Writ Petition No.5038 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>26.09.2024</i>
<i>Pronounced on</i>	<i>06.12.2024</i>

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.5038 of 2018
& WMP No.6211 of 2018

P.Magimai Sangeetha

..Petitioner

vs.

1.The Government of Tamilnadu,
rep. by its Secretary,
Social Welfare and Nutritious Meal Programme Department,
Fort St George,
Chennai-600 009

2.The District Collector,
Villupuram District.

3.I.Jesintha Mary

4.South Arcot Diocesan Corporation,
rep. by its Manager,
Dioceses Organization Secretary,
St.Mary's Church Campus,
Cuddalore

... Respondents

PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in proceedings Na.Ka.No.PE4/533/2016-2, dated 21.12.2017, on the file of the second respondent and further direct the second respondent to appoint the petitioner as Noon Meal Scheme Organizer in the South Arcot Diocesan Corporation, Cuddalore.



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For Petitioner : Ms.V.Srimithi
For Respondents : Mr.G.Amiedius GA for RR1 & 2
Mr.K.Shekespheare, for R3

ORDER

This Writ Petition has been filed, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in proceedings Na.Ka.No.PE4/533/2016-2, dated 21.12.2017, on the file of the second respondent and further direct the second respondent to appoint the petitioner as Noon Meal Scheme Organizer in the Nedungampattu R.C. Elementary School, Mugaiyur Panchayat Union, Villupuram District.

2.According to the petitioner, she applied for the post of Noon Meal Organizer at Nedungampattu R.C. Elementary School, Mugaiyur Panchayat Union, Villupuram District. She is fully qualified to hold the said post since she completed MCA and also passed Type Writing in English. She suffers from 90% disability(deaf and dumb). The second respondent called the petitioner for interview on 01.02.2017 to appear alongwith documents and accordingly, she also attended the interview. But nearly after 10 months, all of a sudden, the third respondent herein i.e, I.Jesintha Mary was appointed



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as Noon Meal Organizer in the said institution. The second respondent had failed to note that the petitioner is physically handicapped and not extended the benefits conferred under the Rights of Persons with Disability Act 2016. The second respondent had not even disclosed the reason for not appointing the petitioner for the said post. Therefore, aggrieved by the non-selection to the post of Noon Meal Organizer, the petitioner is constrained to file the present Writ Petition challenging the appointment of the third respondent and for consequential relief to appoint her as Noon Meal Organizer.

3.A counter affidavit has been filed on behalf of the second respondent, wherein, it is stated that the respondents called for the suitable candidates in pursuance of the notification dated 15.07.2016 issued by the Office of the second respondent to attend the interview for filling the post of Noon Meal Organizer under Puratchi Thalaivar MGR Noon Meal Scheme at Nedungampattu R.C. Elementary School, Mugaiyur Panchayat Union, Villupuram District. In response to the same, nearly 15 candidates had participated in the interview including the petitioner as well as the 3rd respondent herein at Mugaiyur Panchayat Union Office. In this case, R.C. Elementary School, Nedunkampattu is being a minority Government Aided



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Institution, the rule of reservation shall not be applicable as per G.O.No.4, Social Welfare and Nutritious Meal Department dated 06.01.2011. Hence, the petitioner cannot claim this Noon Meal Center to physically challenged person for reservation. Even considering the representation of the petitioner that she is being a 90% of differently abled person and as per G.O.No.139, Social Welfare and Nutritious Meal Department dated 28.05.2012, partially deaf persons and the persons with lesser degree of locomotive disability only be considered for appointment. It is further stated that the Government directed that the post of Cook and Cook Assistants are exempted from the specified reservation of 3% for appointing Differently abled persons as they have to handle big cooking vessels and also entrust with the task of feeding food properly to the Children. The petitioner admittedly, 90% differently abled person and she cannot do day to day work of the Noon Meal Center. For these reasons, the petitioner has not been selected to the said post.

4. It is stated that out of 15 candidates called for interview, the list of selected candidates was sent to the correspondent of R.C. Elementary School, Nedunkampattu, who in turn short listed 5 eligible candidates for the said post. The second respondent being the appointing authority,



scrutinized the list and carefully compared with the eligible persons and found that the third respondent is the senior and a preferable person by age when compared to other candidates and she is also local resident of the school and accordingly, selected and appointed her which was purely on merit abiding with the Rules and Regulations. Therefore, there is no illegality in selecting the third respondent as Noon Meal Organizer. With these averments, the second respondent sought for dismissal of the Writ Petition.

5. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 & 2 and learned counsel appearing for the 3th respondent and perused the entire material available on record.

6. It is an admitted fact that the petitioner is suffering with 90% disability(deaf and dumb). She obtained a degree in MCA from Bharathidasan University. She also passed Type Writing (Junior Grade) in Tamil and English languages. She made an application for the post of Noon Meal Organizer at Nedungampattu R.C. Elementary School, Villupuram



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District, pursuant to the notification dated 15.07.2015 issued by the second respondent. The said school is being a minority aided school by following G.O.No.4, Social Welfare and Nutritious Meal Department dated 06.01.2011, list of selected candidates was forwarded to the Correspondent of the said School to enable them to short list 5 candidates. The name of the petitioner is included in the list of 5 candidates recommended by the school. The second respondent appointed the third respondent.

7.The contention of the petitioner is that she is the most eligible and deserving candidate to be considered for appointment than the third respondent.

8.The contention of the second respondent is that as per G.O.No.139, Social Welfare and Nutritious Meal Department dated 28.05.2012, wherein, it is provided that while appointing Noon Meal Organizer, partially deaf persons and persons with lesser degree of locomotive disability, may be considered for appointment as per 3% reservation for appointment. But unfortunately, though the petitioner being 90% differently abled person, the second respondent has considered that she is unable to attend day to day



work as Noon Meal Organizer due to the reason that the duties of the Noon Meal Organizer includes physical works and the petitioner will find very difficult to carry out said duties.

9.On careful examination of the facts and circumstances of the case, this Court does not find any fault with the opinion of the second respondent in not considering the petitioner for appointment to the post of Noon Meal Organizer, as it is difficult to her to attend day to day work as Noon Meal Organizer in view of the nature of the works to be undertaken by the petitioner if selected.

10.In view of the same, we do not find any irregularity in appointing the third respondent as Noon Meal Organizer in the said school. Accordingly, this Court is not inclined to interfere with the proceedings in Na.Ka.No.PE4/533/2016-2, dated 21.12.2017 issued by the second respondent in appointing the third respondent as Noon Meal Organizer.

11.However, it is an admitted fact that the petitioner is aged 31 years woman, suffering with 90% disability (deaf and dumb). But it had not



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deterred her from completing MCA course in First Class from Bharathidasan University and also from passing Type Writing(junior grade) in English and Tamil. Admittedly, the petitioner is a meritorious candidate. Considering the peculiar situation being faced by the petitioner in not getting the employment due to her disability, in the considered opinion of this Court, it is appropriate and reasonable to issue certain direction to the second respondent i.e., the District Collector, Villupuram District to consider the petitioner to accommodate in any suitable post in any Department on humanitarian grounds, taking into consideration of her educational qualifications and as per the provisions of the Rights of Persons with Disabilities Act, 2016.

12.In this context, it will be profitable to this Court to rely on the decision of the Apex Court, reported in “***Bandhua Mukti Morcha vs. Union of India (UOI) and Others***” reported in MANU/SC/0051/1983, wherein, it has been observed as under:

"20. ... In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right



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and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights."

13. Accordingly, this Writ Petition is disposed of and the second respondent/the District Collector, Villupuram District is directed to consider the case of the petitioner on humanitarian ground and accommodate her in any suitable post in any Department under his jurisdiction within a period of eight weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous is closed.

06.12.2024

Index : Yes/No
Speaking order: Yes/No
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To
1. The Secretary,
The Government of Tamilnadu,



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Social Welfare and Nutritious Meal Programme Department,
Fort St George,
Chennai-600 009

2.The District Collector,
Villupuram District.



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BATTU DEVANAND, J

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Pre-Delivery order in
Writ Petition No.5038 of 2018

06.12.2024