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W.P.No.22327 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.22327 of 2012
and M.P.No.1 of 2012

- 1.Aided Primary School,
Rep. by the Secretary Tmt.K.Indira,
K.Thenpathi, Valkollai Ppost,
Sethiothoppu Via,
Chidambaram Taluk.
- 2.Victory Aided Primary School,
Rep. by the Secretary S.Arivarasan,
Orathur Village & Post,
Chidambaram Taluk.
- 3.Aided Primary School,
Rep. by the Secretary K.Venkatesan,
Perur Post, Kootampuli – 6043 701,
Palayamkottai,
Kattumannar Koil Taluk.

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep. by the Secretary to the Government,
Social Welfare and Nutritious Programme,
(NMP-I) Department,
Fort St.George, Chennai – 9.
- 2.The District Collector,
Cuddalore District.

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3.The Personal Assistant to the Collector,
Noon Meal Scheme,
Cuddalore District.

4.The Commissioner/Block Development Officer,
Keerapalayam Panchayat Union,
Cuddalore District.

Respondents

...

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Declaration, declaring the impugned G.O.Ms.No.4 dated 06.01.2011 and consequent G.O.Ms.No.72, dated 30.04.2012 issued by the respondent as ultravires to the TNPSR Act-1973 and Article 14 of Constitution of India in so far as the petitioners are concerned and direct the respondent to select the Noon Meal Organisers, cooks and Noon Meal Assistants as per recommendation made by the individual school managements as stipulated in G.O.Ms.No.294, Social Welfare and Nutritious Meal Programme (NMP-I) department dated 21.10.1993.

For Petitioner : Mr.R.Ashok
for Mr.S.N.Ravichandran

For Respondents 1 to 3 : Mr.M.Murali,
Government Advocate

For Respondent 4 : Mr.P.Chinnadurai

ORDER



This writ petition has been filed by the petitioner to declare the impugned G.O.Ms.No.4 dated 06.01.2011 and consequent G.O.Ms.No.72, dated 30.04.2012 issued by the respondent as ultravires to the TNPSR Act-1973 and Article 14 of Constitution of India in so far as the petitioners are concerned and direct the respondent to select the Noon Meal Organisers, cooks and Noon Meal Assistants as per recommendation made by the individual school managements as stipulated in G.O.Ms.No.294, Social Welfare and Nutritious Meal Programme (NMP-I) department dated 21.10.1993.

2. This Court in a similar matter in W.A (MD)No.792 of 2012 & Batch of cases vide judgment dated 22.03.2017 has upheld the G.O.Ms.No.72, Social Welfare and Nutritious Meal Programme (NMP-I Department), dated 30.04.2012. For better appreciation, the relevant paragraphs are extracted hereunder:-

“22. G.O.Ms.No.4, Social Welfare and Nutritious Meal Programme (NMP) Department, dated 06.01.2011, was issued with regard to Nutritious Meal Workers. This also stipulated that advertisement regarding details of vacancies and conduct of interview was to be carried out and out of the persons who applied, the School Management was to recommend 5% and District Collector was authorised to issue appointment letter to



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the persons recommended by the School in the case of aided minority schools and whereas in the case of non-minority Government aided school, the appointment procedure as applicable to Panchayat Union / Municipal Corporation schools as noted above was to be followed.

23. G.O.Ms.No.4 {Social Welfare & Nutritious Meal program (NMP) Department} dated 6/1/2011 reads as under:-

“Abstract

Nutritious Meal program PTMGR Scheme – Appointment of Nutritious Meal Workers in the Minority Government Aided Schools and Non-Minority Government Aided Schools – Amendment in the existing appointment procedures - Orders issued.

Social Welfare & Nutritious Meal program (NMP) Department

G.O.(Ms)No.4

Dated :06.01.2011

Thiruvalluvar Aandu, 2041

Margazhi,22

Read :

1. G.O.(Ms)No.918, Social Welfare and Nutritious Meal program Department, dated 3-11-1989
2. G.O.(Ms)No.294, Social Welfare and Nutritious Meal program Department, dated 21.10.1993
3. Government Letter No.31865/NMP1/93 dated, 21.12.1993
4. G.O.(Ms)No.33, Social Welfare and Nutritious Meal program Department, dated 5.2.1993
5. G.O.(Ms)No.206, Social Welfare and Nutritious Meal program Department, dated 13.9.1996

Read also :

6. From the Collector of Thanjavur Letter No.1259/08 NMP 1, dated 23.9.2009
7. G.O.(Ms)No.142, Social Welfare and Nutritious Meal program Department, dated 6.7.2010
8. G.O.(Ms)No.163, Social Welfare and Nutritious Meal program Department, dated 18.8.2010

ORDER :

Various Government Order's regarding appointment of Nutritious Meal Workers in the Government Aided Minority Schools and Non-Minority Government Aided Schools under



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PTMGR Nutritious Meal program were issued several years ago. The District Collector Thanjavur has requested the Government to consolidate the orders read 1 to 5 with certain modification taking into consideration of the present situation.

2. After careful examination of the above proposal, the Government have decided to follow the procedures mentioned below in the appointment of Noon Meal Organizer, Cook and also Cook Assistant in the Government Aided Minority Schools / Non-Minority Government Aided Schools and issue orders accordingly.

Appointing Authority

- In respect of appointment of Noon Meal Organizer the District Collector will be appointing authority.*
- In respect of appointment of Cook and Cook Assistant Personal Assistant to the District Collector (NMP) will be the appointing authority. Only the Appointing Authority has the power to fill up the vacancies of Nutritious Meal Worker of a School by transfer of Service or by promotion or by direct recruitment.*

Appointment Procedure

Nutritious Meal Centre of Government Aided Minority School

- In respect of appointment of Nutritious Noon Meal Organizer, Cook and Cook Assistant for Rural areas, the Commissioner of Panchayat Union and for Urban areas Commissioner of Municipality/Corporations should make advertisement regarding the details of vacancies and conduct interview after receiving applications and scrutinize the same and prepare a list of eligible candidates. The list should be prepared on the basis of eligibility arrived at in the interview and Manager /Head Master of the School concerned should be allowed to go through the list of eligible persons. The School Management may recommend 5 persons from the list within 5 working days after verifying the list. After following the above said procedure in the appointment of Noon Meal Organizer, the District Collector should issue the appointment order to 1 person out of*



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the 5 persons recommended by the Manager/Head Master of the School concerned. In respect of Cooks, Cook Assistant appointment order should be issued by the Personal Assistant (Nutritious Meal program) to the District Collector.

•In respect of Minority schools to fill up the vacancies for Noon Meal Organizers, Cook and Cook Assistant communal rotation need not be followed.

Nutritious Meal Centers for Non-Minority Government Aided School

•In respect of appointment of Nutritious Meal Workers, in the Non-Minority Government Aided Schools orders in G.O.(Ms)No.163, Social Welfare and Nutritious Meal program Department, dated 18.8.2010 and G.O.(Ms)No.142, Social Welfare and Nutritious Meal program Department, dated 6.7.2010 regarding communal rotation method should be followed. The appointment procedure for Nutritious Meal Workers will be similar to the Government / Local body (Panchayat Union / Municipality / Corporation Schools) followed in the appointment for Nutritious Meal Workers (Organizer, Cook, Cook Assistant) be followed in the Non-Minority Government Aided Schools.

3. Since some modifications regarding appointment of Nutritious Meal Workers in the Government Aided Minority School / Non-Minority Government Schools have been made para-2 above necessary amendments are made to the orders mentioned from 1 to 5 above.

4. After the issue of this order all appointments for Nutritious Meal Workers in all the Nutritious Meal Centres of



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Government Aided Minority Schools/ Non-Minority Schools should be made by following the procedures mentioned in this order.

5. Director of Social Welfare / District Collector are instructed to bring this order to the notice of Monitoring and Inspecting Officials

(By order of the Governor)

Mohan Pyare,

Principal Secretary to

Government”

24. Government, thereafter issued G.O.Ms.No.72, Social Welfare and Nutritious Meal Programme (NMP2) Department, dated 20.04.2012, notifying the 28,596 posts in different districts for appointment, which have been noticed above.

89. In view of our above conclusions,

(i) Writ Appeal (MD) Nos.792 of 2012, 849 to 855 of 2012, 924 to 933 of 2012, 62 of 2013 and 63 of 2013 filed by the State are ALLOWED and the common order passed by the Writ Court in W.P.(MD)Nos.4451 of 2012 etc., batch, dated 01.10.2012, is set aside.

(ii) Writ Appeal (MD) No.841 of 2012 is filed by one M.Meenalakshmi, challenging the common order of the Writ Court dated 01.10.2012, passed in W.P.(MD)Nos.4451 of 2012 etc., batch. Ms.M.Meenalakshmi filed writ petition No.4817 of 2012, challenging the rejection of her claim for appointment as



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Anganwadi worker, on the ground that there are three addresses with regard to her residence and all of those addresses are not within 3 kms from the Anganwadi Centre as anganwadi appointments are given only to those persons who are residing within 3 kms from the anganwadi centre. The grievance of Ms.M.Meenalakshmi is that though the Writ Court has set aside the eligibility criteria stipulated in G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department, dated 18.08.2010 with regard to place of residence i.e, within 3 kms, failed to give a specific direction to the State to appoint her as Anganwadi Worker. As we have now set aside the order of Writ Court dated 01.10.2012, passed in W.P.(MD)Nos.4451 of 2012 etc., batch, holding that the distance between the place of appointment and the residence of the applicant should be within three kilometers as stipulated in G.O.Ms.No.163, Social Welfare and Nutritious Meal Programme Department, dated 18.08.2010 is valid, the prayer sought for by the appellant/Ms.M.Meenalakshmi cannot be countenanced and the Writ Appeal (MD) No.841 of 2012 is DISMISSED.

(iii) Writ Appeal (MD) No.858 of 2012, filed by the State is ALLOWED and the common order passed by the Writ Court in W.P.(MD)Nos.7981 of 2012 etc., batch, dated 17.10.2012, is set aside.

95. First let us test the validity of G.O.Ms.No.43, Social Welfare and Nutritious Meal Programme Department, dated 28.08.2014. G.O.Ms.No.43, dated 28.08.2014, is akin to



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G.O.Ms.No.72, dated 20.04.2012. In the earlier part of our judgement we have discussed in detail the validity of G.O.Ms.No.72, dated 20.04.2012 and upheld its validity.”

3. In this case, the subject matter relates to G.O.Ms.No.72, Social Welfare and Nutritious Meal Programme (NMP-I Department), dated 30.04.2012. Therefore, the aforesaid decision is squarely applicable to the present case on hand.

4. In the light of the aforesaid judgment passed by the Division Bench of this Court in W.A(MD)No.792 of 2012 & Batch of cases judgment dated 22.03.2017, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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J.SATHYA NARAYANA PRASAD,J.

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