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W.P.No.12911 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.12911 of 2024

K.Manikandan

... Petitioner

Vs.

- 1.The Government of Tamilnadu,
Rep. By its Secretary,
Social Welfare & Nutritious Meal Programme Department,
Fort St.George, Chennai 600 009
- 2.The Social Welfare Commissioner,
Social Welfare & Nutritious Meal Programme
Department,
2nd Floor, Saidapet, Chennai 600 015
- 3.The District Collector,
Cuddalore, Cuddalore District
- 4.The Block Development Officer,
Keerapalayam Panchayat, Union,
Keerapalayam, Cuddalore District

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records related to the order passed by the third respondent dated 15.12.2023-Na.Ka.No:BD1/1389/2023 and to quash the same and direct the third respondent to appoint the petitioner under compassionate ground appointment in the post of Puratchi Thalaivar MGR Nutritious Meal Programme Centre organizer or suitable post within the time fixed



W.P.No.12911 of 2024

by this Court.

For Petitioner : Mrs.Nalini Chidambaram,
Senior Counsel
for M/s.P.Uma

For Respondents : Mr.E.Vijay Anand,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 15.12.2023 thereby rejected the claim made by the petitioner seeking appointment on compassionate ground.

2. The petitioner's father was working at Puratchi Thalaivar MGR Nutritious Meal Programme Centre. While he was in service, he died on 04.02.2015 leaving behind his wife, four sons, one daughter, father and mother. The petitioner is one of his sons. The petitioner's qualification is SSLC and he is unemployed presently. The petitioner submitted representation seeking compassionate ground appointment along with no objection certificates received from the other legal heirs. However, the said request was rejected by saying GO.Ms.No.48, Social Welfare and Women Rights (Sa.Na4-2) Department dated 18.08.2021 thereby ordered to give compassionate appointment on the demise of



W.P.No.12911 of 2024

employees under Nutritious Meal Scheme only for women. This issue has already been dealt with in various writ petitions by this Court. The recent order passed by this Court in WP.No.28231 of 2023 dated 26.06.2024 and held as follows:

2. The facts relating to the disposal of the Writ Petition are that the petitioner-s mother, Jayam Ganesan, died in harness while in service on 05.11.2021, while serving as a Cook at Government Higher Secondary School, Keelaiyur. Thereupon, since the petitioner's family was in indigent circumstances and immediate penury, the petitioner applied for appointment on compassionate grounds on 21.03.2022. The same is rejected by the order, dated 01.04.2022 and communicated by another order, dated 04.08.2023. By the said orders, the petitioner was informed that the petitioner-s mother was employed in the Noon Meal Scheme and all the posts of Noon Meal Organiser / Cook etc., are all 100% reserved for women and therefore, the Government issued in G.O.Ms.No.48, dated 18.08.2021 restricts the compassionate appointment for women alone. The petitioner, therefore, has filed this present Writ Petition challenging the G.O.Ms.No.48, dated 18.08.2021 and the orders, dated 01.04.2022, 28.10.2022 and



W.P.No.12911 of 2024

04.08.2023.

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4. *In reply thereof, the learned Counsel for the petitioner submits that in the said case where the Government Order was upheld i.e., in W.P.(MD).No.12263 of 2022 as also in other similarly situated cases in W.P.(MD).No.6186 of 2022, even while upholding the Government Order, the respondents were directed to forward the application to the District Collector concerned for the purpose of considering the case of the writ petitioner along with the General List of persons to be considered under compassionate appointment in respect of the other posts/departments. Therefore, the same order can be passed in the instant case also.*

5. *I have considered the rival submissions made on either side and perused the material records of the case.*

6. *The order in W.P.(MD).No.12263 of 2022 reads as follows :-*

“2. The Government, in a recent order in G.O.Ms.No.48, Social Welfare and Woman Rights Department dated 18.08.2021, has ordered that only the female legal heirs can be considered for appointment to the post of Noon Meal Organizer and that the male legal heirs are not entitled for the said post.



WEB COPY



W.P.No.12911 of 2024

3. *In view of the aforesaid Government Order, I do not find any infirmity in the impugned order passed by the fourth respondent. Accordingly, the Writ Petition stands dismissed. However, it is open to the petitioner to make a representation seeking for compassionate appointment, to any other post other than Noon Meal Organizer and on receipt of such representation, the concerned respondent shall consider it, on its own merits and pass appropriate orders in accordance with law as expeditiously as possible. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed. “*

7. *Even the prayer in the said Writ Petition was only challenging the order of rejection for compassionate appointment and the same is as follows:-*

“Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent in his proceedings in Na.Ka.A5/782/20 dated 19.04.2021 and quash the same as illegal and consequentially to direct the respondents to provide employment to the petitioner as Noon Meal Organizer on compassionate ground or in any entry level post by taking into account of his indigent



W.P.No.12911 of 2024

circumstances and it terms of order made in W.A.(MD) No.702 of 2007 dated 08.01.2008 and in the light of G.O.Ms.No.125 Social Welfare and Nutritious Meal programme Department dated 18.08.2010 within the period that may be stipulated by this Court.”

Therefore, it cannot be said that in the said case, the Government Order impugned in the present Writ Petition was upheld.

8. As far as the Noon Meal Scheme is concerned, there cannot be any quarrel over the reservation of the said post to women. Whereas, if the said employees died in harness while in service, the respondents themselves have included the said employment also within the scheme of compassionate appointment. The only thing is that the impugned Government Order states that since all the posts are reserved only for women candidates, compassionate appointment cannot be considered in respect of male candidates. The said reasoning makes a discrimination on the basis of sex. It not only affects the male children of female employees, but, effectively puts the female employees a par below to that of their male counterparts. The object of providing compassionate appointment is to provide succor to the family which is in penury. Just because the woman employee has left only a



W.P.No.12911 of 2024

male legal heir/son, then, compassionate appointment cannot be deprived. Now, essentially, the G.O.Ms.No.48, dated 18.08.2021 discriminates and therefore, will not stand the scrutiny of Articles 14 & 16 of the Constitution of India. Accordingly, the same is declared to be illegal to the extent it totally denies the benefit to the male employees.

9. On the other hand, as directed by this Court in the earlier orders, if 100% of the vacancies in a particular department is reserved only for women, then, the applications have to be forwarded to the District Collector or to the Personnel and Administrative Reforms Department as the case may be, to be considered under the general pool for being appointed in other suitable posts for compassionate appointment.

3. In view the above, this Writ Petition is allowed on the following terms :-

(i) The Government Order in G.O.Ms.No.48 Social Welfare & Women Rights (Sa.Na422) Dept. dt.18.08.2021 is declared to be illegal and violative of Articles 14 and 16 of the Constitution of India to the extent it excludes male heirs completely from compassionate appointment;

(ii) Secondly, the impugned order dated 15.12.2023 shall stand



W.P.No.12911 of 2024

quashed;

(iii) The District Collector, Cuddalore District may consider the application of the petitioner afresh along with the other applications depending on the application seniority and appoint the petitioner on compassionate basis if he is eligible upon consideration on merits in accordance with seniority subject to availability of the vacancies;

(iv) There shall be no order as to costs.

03.07.2024
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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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W.P.No.12911 of 2024

WEB COPY

To

1. Secretary,
The Government of Tamilnadu,
Social Welfare & Nutritious Meal Programme Department,
Fort St.George, Chennai 600 009
2. The Social Welfare Commissioner,
Social Welfare & Nutritious Meal Programme
Department,
2nd Floor, Saidapet, Chennai 600 015
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Keerapalayam, Cuddalore District



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W.P.No.12911 of 2024

G.K.ILANTHIRAIYAN, J.

lok

W.P.No.12911 of 2024

03.07.2024



WEB COPY



W.P.No.12911 of 2024

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