



WP(MD) No.10365 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.03.2024

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THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P(MD)No.10365 of 2021

V.Muthu Nachiyar

... Petitioner

Vs.

- 1.The Director Cum Mission Director,
Social Welfare and Nutritious Meal
Programme Department/ Integrated Child
Development Scheme, Tharamani,
Chennai.
- 2.The Commissioner,
Commissionerate of Social Welfare and
Nutritious Meal Programme Department,
Saidapet, Chennai.
- 3.The District Collector,
Tirunelveli District, Tirunelveli.
- 4.The District Project Officer,
Integrated Child Development Project Office,
Collectorate Campus, Tirunelveli.
- 5.The Child Development Project Officer,
Integrated Child Development Project Office,
Palayamkottai, Tirunelveli.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in Na.Ka.No. 8331/E3-3/2020 dated 15.12.2020 and the consequential impugned order of the 5th respondent in Na.Ka.No.511/A/2020 dated 22.12.2020 and quash both and direct the respondents to regularize the petitioner service from the date of completion of 2 years in the consolidated pay as per G.O.Ms.No. 151, Social Welfare and Nutritious Meal Programme Department dated 16.10.2008, with all service and monetary benefits within the time fixed by this Court.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.N.GA.Nataraj,
Government Advocate.

ORDER

The petitioner herein is working as Anganwadi Worker under the control of respondent No.5 having been appointed as such on 26.03.2010. The petitioner also claims to be a person belonging to physically disabled having suffered 60% of the disability. The petitioner, on having come to know about the Government Order issued in G.O.Ms.No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008,



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providing for grant of time scale of pay to the disabled persons working for more than two years on consolidated pay in various Departments, made a claim for grant of time scale of pay, as she has completed more than two years of service. The said claim of the petitioner was also directed to be considered by this Court in W.P(MD)No.14552 of 2020 by an order dated 16.10.2020 and pursuant thereto, the respondent No.1 considered the claim of the petitioner for extending the benefit under G.O.Ms.No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008 and negated the said claim on the ground that the Anganwadi employees are part time employees in terms of G.O.Ms.No.370, Backward Classes Welfare Nutritious Meal Programme and Social Welfare Department, dated 16.04.1989 and also on the ground that the petitioner is being paid time scale of pay and as such Anganwadi staffs are not entitled for the benefit of G.O.Ms.No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008. Pursuant to the same, the fifth respondent has issued the consequential proceedings bearing Na.Ka.No.511/A/2020, dated 22.12.2020. Aggrieved by the said orders dated 15.12.2020 and 22.12.2020, the petitioner approached this Court by filing the present writ petition.



2. This Court, having noticed that the basis for passing the impugned order is G.O.Ms.No.370, Backward Classes Welfare Nutritious Meal Programme and Social Welfare Department, dated 16.04.1989, directed the learned Government Advocate to produce the copy of the said Government Order and accordingly, the same has been produced before this Court. On a perusal of the same, it is noticed that the said Government Order has no application to the employees working under ICDS programme. Therefore, the ground on which the impugned order dated 15.12.2020 and the consequential order dated 22.12.2020 were issued is totally unsustainable.

3. It is the further contention of the learned Government Advocate that the post of Anganwadi is not a sanctioned post and therefore, the benefit provided under G.O.Ms.No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008 cannot be extended. It is also further contended that the petitioner is working under a scheme sanctioned by the Central Government and therefore, she is not entitled for the benefit of G.O.Ms.No.151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008.



4. On the other hand, the learned counsel for the petitioner placed reliance on a decision of the Hon'ble Apex Court in the case of ***State of West Bengal and others Vs. Kaberi Khastagir and others*** reported in ***(2009) 3 SCC 68*** to contend that the post of Anganwadi under ICDS scheme are all under State cadre posts as held by the Hon'ble Apex Court and therefore, it is not open for the respondents to contend that the post of Anganwadi is not a civil post.

5. The learned counsel for the petitioner also relied upon another decision of the learned Single Judge of this Court in the case of ***M.Thangavel Vs. State of Tamil Nadu*** reported in ***2020 SCC OnLine Mad 2898*** wherein, the learned singled Judge has held as under:

“4.In the light of the submission made by the respective counsels, G.O.Ms.No.151, Social Welfare and Nutritious Meal Department, dated 16.10.2008 was perused. The said Government Order is to the effect that the Government employees, who are physically challenged and who have completed two years of service on consolidated basis, are eligible to be regularized and if required, certain norms also could be relaxed. The Government Order does not speak about the requirement of holding a permanent post on consolidated pay to such employees who are physically challenged



and who had completed two years of service. While that being so, the stand of the fourth respondent herein, as reflected in the counter affidavit that the employees should hold a permanent post for minimum two years, is baseless. The fourth respondent cannot try to read something in between the lines in G.O.Ms.No.151, when the same has not been provided for. As such, the petitioner has already completed two years and he is also physically disabled person and he is in receipt of consolidated pay, would be entitled to benefit of G.O.Ms.No.151.

5.In the light of the above observations, there shall be a direction to the second respondent herein to consider the petitioner's representation dated 19.1.2019 and pass suitable orders in the light of the observations made in this order and thereby regularize the service of the petitioner, if he is otherwise qualified, which process shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.”

6. This Court has carefully considered the submissions made on either side and perused the materials on record.

7. The Hon'ble Apex Court in the case of ***State of West Bengal and others Vs. Kaberi Khastagir and others*** reported in ***(2009) 3 SCC 68***, while dealing with the scheme of ICDS and also the nature of the employment



provided under the said scheme, held as under:

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“31. Having considered the submissions made on behalf of the respective parties, we find ourselves unable to agree with the reasoning either of the learned Single Judge or the Division Bench of the High Court in holding that the writ petitioners were Project employees in respect of the ICDS Project and not employees of the State Government and that their services were coterminous with the Project. Para 35 of the Scheme clearly provides that though the same was a Centrally sponsored scheme, its implementation was left to the respective State Governments with 100% financial assistance from the Central Government for inputs other than supplementary nutrition which was identified as the responsibility of the State Government. In fact, para 47 of the Scheme, which has been extracted hereinabove, in no uncertain terms makes it very clear that even though funds for the Scheme would be provided by the Central Government, the staff would be borne on the appropriate cadres of the States which would sanction the posts in the appropriate corresponding State pay scale. In the face of such provision it is difficult to accept that the writ petitioners were project workers and not employees of the State Government.

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36. All the aforesaid Rules promulgated by the State Government under Paragraph 47 of the Integrated Child Development Scheme leaves little room for doubt that the respondent Nos. 1, 2 and 3 and others similarly situated, were, in



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fact, State Government employees. The learned Single Judge, as well as the Division Bench of the High Court, appear to have been swayed by the submissions made on behalf of the respondent Nos. 1, 2 and 3 (writ petitioners before the High Court) that the State of West Bengal is merely a nodal agency to supervise the implementation of the Scheme which was in the nature of a Project and that the employees thereunder were, therefore, Project employees, overlooking the overall intention and object of the Scheme that in order to provide child care and nutrition for children and lactating mothers, the Central Government was willing to fund the entire project but left the implementation thereof to the State Governments who were authorized under the Scheme to appoint the staff of the Project, who were to be borne on the appropriate cadres of the States. Paragraph 35 of the Scheme, which deals with the functional responsibilities, makes this position very clear.”

8. In the light of the above decision of the Hon'ble Apex Court in the case of ***State of West Bengal and others Vs. Kaberi Khastagir and others*** reported in ***(2009) 3 SCC 68***, in the considered view of this Court, the same situation would prevail in the State of Tamil Nadu as the ICDS scheme is the same for all the States being implemented by the Central Government with 100% financial assistance and the State Government being the



implementing agencies. Therefore, the claim of the petitioner is required to be considered in the contest of their status as considered by the Hon'ble Apex Court in the case of *State of West Bengal and others Vs. Kaberi Khastagir and others* reported in (2009) 3 SCC 68. Further though the post of Anganwadi Worker is stated to be a post under a Central Government, the Anganwadi Workers are being controlled by the District Administrator especially respondents 4 and 5, who are the agencies of the State of Tamil Nadu. Therefore, it is also a serious matter which has to be taken into consideration by the respondents while considering the case of the petitioner. If once the respondents 4 and 5 are the agencies of the State why the petitioner cannot be treated as an employee working in the department of the State? All these matters are to be considered by the respondent No.1 afresh.

9. In the light of the above, this Court is of the view that the reasoning given by the respondents by passing the order dated 15.12.2020 is unsustainable, and it is a fit case where the matters requires to be remanded back to the respondent No.1 for reconsidering the claim of the petitioner afresh. Accordingly, the impugned order passed by the first respondent



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dated 15.12.2020 and the consequential order passed by the fifth respondent dated 23.12.2020 are set aside and the matter is remanded back to the respondent No.1 for reconsidering the claim of the petitioner afresh and for passing appropriate orders by duly taking into consideration the observations made in this order, as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order.

10. Further the respondents are expected to consider the claim of the petitioner by duly taking into account the purpose for which G.O.Ms.No. 151, Social Welfare and Nutritious Meal Programme Department, dated 16.10.2008 came to be issued. The said Government Order is a beneficial order issued for benefiting the class of people working under the Government, who belonged to physically disabled class. If that is the intent and object of the Government order, the effort of the respondents is always to see that such benefit is extended to all such persons, who are covered by the said order.



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11. Subject to the above observations, this Writ Petition is allowed.

There shall be no order as to costs.

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NCC : Yes/No

Index : Yes/No

vsm

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