

W.P(MD)No.18270 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 30.01.2025

Pronounced on : 16.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.18270 of 2021 and
WMP(MD) No.15099 of 2021

Mohandass.V

... Petitioner

Vs

- 1.The Secretary to Government,
The Tamil Nadu Adi Dravidar and Tribal
Welfare Department,
Secretariat,
Chennai.
- 2.The Commissioner,
The Tamil Nadu Adi Dravidar and Tribal
Welfare Department, Cepakkam,
Chennai - 600 005.
- 3.The District Collector,
Dindigul District, Dindigul.
- 4.The District Adi Dravidar And
Tribal Welfare Officer,
Dindigul District, Dindigul.



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5.The Special Tahsildar,
Adi Dravidar Welfare - Unit - 1,
Dindigul District, Dindigul.

6.The Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
4th Floor,
Fort St. George, Secretariat,
Chennai.

Respondents

(R6 is suo motu impleaded by order of this Court, dated 14.05.2025)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the 4th respondent made in proceedings in Na.Ka.No.16366/2021/H6 dt 17.09.2021 and to quash the same and direct the respondents to provide any alternative employment and consider the petitioner for promotion as office Assistant taking into consideration his 12 years of service in the feeder cadre without insisting for serving as Night Watchman.

For Petitioner	: Mr.C.Balakarthick
For Respondents	: Mr.Veerakathiravan
	Additional Advocate General
	Assisted by
	Mr.P.T.Thiraviam

ORDER

The petitioner, working as a Cook in the Government
Adi Dravidar Welfare Hostel, Natham, has filed this writ petition as

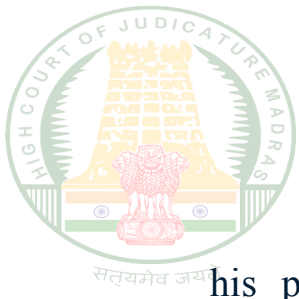


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against the order of the fourth respondent/the District Adi Dravidar And Tribal Welfare Officer, Dindigul District, in and by which, his deputation as Office Assistant in Government High School, Muruganpatti was cancelled and he was reverted to the post of Cook in the Government Adi Dravidar Welfare Hostel, Natham. The petitioner also seeks a direction to the respondents to provide him an alternative employment by considering his disability and his service in the feeder category.

2.The case of the petitioner is that he was appointed as a Cook in the Government Adi Dravidar Welfare Hostel, Natham in the year 2008, under the disabled quota. He was affected with polio and he is having the disability to an extent of 60%. While he was working as cook, the petitioner has met with an accident and therefore, he has made a request for alternative employment and the same was considered and he was also provided with an alternative employment as Office Assistant in Government Adi Dravidar Welfare High School, Muruganpatti, by the fourth respondent, vide



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his proceedings in Na.Ka.No.50741/2008/H3, dated 05.05.2008.

While so, he was reverted to the same post as Cook in Government Adi Dravidar Welfare Hostel, Kannivadi by the fifth respondent/the Special Tahsildar, Adi Dravidar Welfare Unit I, Dindigul, by a proceedings in Na.Ka.No.38/2011/AA, dated 06.09.2011 and the same was challenged by this petitioner in WP(MD) No.10516 of 2011. This Court, by its order, dated 27.09.2011 has disposed of that writ petition as under:-

"6.Perusal of the orders, dated 29.07.2011 and 05.08.2011 of the District Adi Dravidar Welfare Officer, Dindigul, the fourth respondent herein and enclosed in the typed set of papers at Page 10 & 14 shows that only the above said competent authority has passed the orders of transfer or posted the cooks to various posts/places. The language employed by the fifth respondent is similar to the one found in the above referred orders, passed by the fourth respondent, indicating that it is nothing but an order of transfer and not an alternative placement. Therefore, this Court is unable to accept the contention of the learned counsel for the respondents that the order, dated 06.09.2011, was only an temporary arrangement and it is not a transfer. The impugned order reads that the petitioner, who has been appointed in Adi Dravidar Welfare



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Unit No.I, Dindigul, has been directed to work, as cook, from 06.09.2011 in Kannivadi Government Adi Dravidar Welfare (Students) Hostel. That apart, the order, dated 06.09.2011, of the fifth respondent is also not in conformity with the instructions of the second respondent issued in Na.Ka.No.Tha3/30908/2010, dated 05.08.2011, to provide the petitioner, an alternative job than cook, in view of the physical difficulty. Being a differently abled person, the authorities can retain the petitioner in any suitable post, unless his retention is causing any administrative inconvenience or for any other bona fide reasons. 7.In view of the above and having regard to the extent of disablement of the writ petitioner, posting the petitioner, as cook, in a school, would certainly cause inconvenience and for the above said reasons, the impugned order of transfer, dated 06.09.2011, is set aside."

3.The petitioner has also filed another writ petition challenging the order of approval of transfer, dated 09.09.2011, in WP(MD) No.5830 of 2012 and when that writ petition was taken up for hearing on 20.02.2018, it was informed by the learned Government Advocate that pending the writ petition, this petitioner was promoted as Assistant staff and working in Muruganthittu Government Adi Dravidar Welfare Higher Secondary School.



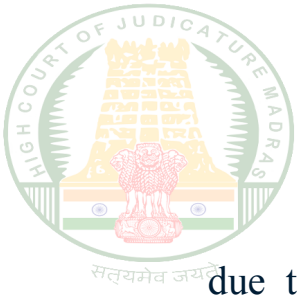
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Recording the said submission, that writ petition was disposed of by this Court, by its order, dated 20.02.2018. In this circumstances, the posting order of this petitioner at Government Adi Dravidar Welfare High School, Muruganpatti was cancelled and he was reverted to the Government Adi Dravidar Welfare Hostel, Natham once again as Cook, by the impugned order, dated 17.09.2021.

4.The learned counsel for the petitioner submits that the petitioner has already completed Accounts Test Part I for Subordinate Officers and the Government Officers Manual Test and therefore, he is eligible to be appointed as Office Assistant. However, without considering the same, he has been reverted to the post of Cook.

5.The Special Tahsildar, Adi Dravidar Welfare Unit I, Dindigul has filed a counter affidavit that this petitioner was appointed as a Cook, under the disabled quota. With regard to the earlier posting of the priority appointment, it is contended that it was



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due to the vacancy arose in the post of Office Assistant, at the relevant point of time.

6.The learned Government Advocate for the respondents state that as per the service Rules, the persons, who are working as cook in the Government Adi Dravidar Welfare Hostel cannot be posted as an Office Assistant and a cook can be promoted only as a Night Watchman. He also states that the petitioner was relieved from Muruganpatti High School and joined at Natham as cook. According to the respondents, the petitioner, who got appointment as a cook, based on a disability quota cannot seek for an alternative employment.

7.This Court considered the rival submissions made and also perused the materials placed on record.

8.The petitioner was appointed as Cook in Government Adi Dravidar Welfare Hostel, Natham, under the Disability quota.



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The petitioner claims for an alternative employment and also for promotion as Office Assistant. As per the existing Rules, a person, who is working as a Cook can be promoted only as a Watchman and from the post of Watchman, he can be promoted to the post of Office Assistant. The petitioner was accommodated as Office Assistant at Muruganpatti High School and the same was cancelled and he was reverted back as Cook, by the order impugned in this writ petition. The petitioner also claims that this order of transfer is against the policy of the Government on the transfer of Disabled persons. The petitioner also claims for alternative employment as Office Assistant that the post of Office Assistant is the promotional post to the post of Cook. The petitioner also claims that he has completed the required departmental exams and eligible to be promoted as Office Assistant. Therefore, he has to be necessarily considered for the post of Office Assistant.

9.The petitioner was appointed as a Cook only under the disability quota, based on a disability certificate issued by a doctor at



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that relevant point of time. He claims that he suffered with an accident, while cooking and therefore, he was provided with an alternative employment as Office Assistant. He also claims that he has completed the required tests. However, as per the existing Rules, a person, who was appointed as a cook can be promoted only as Night Watchman, then only as Office Assistant. In this case, the petitioner with disability of 60% was appointed as a Cook and therefore, he cannot claim an alternative employment as a matter of right. Similarly, as per the Service Rules, the petitioner is also not entitled for promotion as Office Assistant, without fulfilling the requirements. However, considering the submissions of the petitioner that he has suffered with an accident, while serving as a cook and he was also provided with an alternative employment as Office Assistant, this Court directs the fourth respondent to consider the case of the petitioner sympathetically and provide him an alternative employment, nearby his native.



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10. While perusing the documents, this Court found that the petitioner has enclosed a disability certificate along with this writ petition that he is having the disability to an extent of 40%, however, he got the appointment in the year 2008 with the disability certificate that he was having the disability to an extent of 60%. Considering the variations in assessment of disability by the medical officers and in order to ascertain the actual disability, this Court has referred this petitioner to the Medical Board, Rajaji Government Medical College Hospital, Madurai. A Team of Orthopedist of Rajaji Government Hospital has issued a disability certificate to this petitioner that he is having the disability to an extent of 51%. Totally, three disability certificates are available to this petitioner alone, for 60%, 40% and 51%. It appears that there is no uniformity in issuing the disability certificates. Section 34 of Right of Persons with Disabilities Act, 2016 mandates to provide reservation at least 4% in all vacancies in Government establishments. This petitioner was also appointed in one such vacancy, under the disability quota. Apart from this employment, the State and Central Governments are also providing



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certain other benefits to the persons of disability, such as financial assistance, Special Pension schemes, unemployment allowances, concession on transportation, reservation in education, incentive for self employment etc., The employment and other benefits are provided to the persons suffered with disability, in order to ensure that they are also treated equally with others. In the event, if the certificates of this nature is provided, then, the opportunities/benefits provided to the disabled persons would be snatched away by those, who are not deserved and therefore, this issue needs to be addressed by the Government by issuing necessary directions/Circulars.

11.The Department of Empowerment of persons with disabilities under the Ministry of Social Justice and Empowerment, Government of India had issued certain guidelines for assessing and evaluating the percentage of disability. Procedures for issuance of disability certificates were also framed and the same needs to be followed scrupulously.



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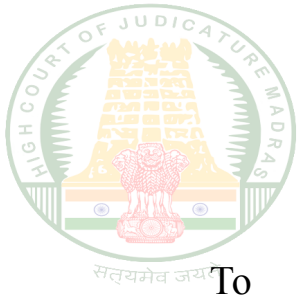
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12.Considering the manner in which, the disability certificates were issued in this case, this Court *suo motu* impleads the Secretary of Health and Family Welfare Department as a party to this writ petition and direct the Secretary to Government to issue necessary instructions/Circulars to the concerned Departments with the guidelines framed by the Ministry of Social Justice and Empowerment, in assessing the disability with a direction to follow the same without any deviation.

13.With the above observations and direction, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous petition is closed.

16.05.2025

NCC :Yes/No
Index :Yes
Internet:Yes
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To
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Welfare Department,
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Chennai.
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4. The District Adi Dravidar And
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Dindigul District, Dindigul.
5. The Special Tahsildar,
Adi Dravidar Welfare - Unit - 1,
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B.PUGALENDHI, J.

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Pre-Delivery Order made in
W.P(MD)No.18270 of 2021 and
WMP(MD) No.15099 of 2021

16.05.2025