

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P. No. 19509 of 2009

P. Tamilselvi

..Petitioner

Vs.

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

2. Personal Assistant to the
District Collector (Noon Meal),
Thiruvannamalai.

3. The Commissioner,
Kilpennathur Panchayat Union,
Thiruvannamalai Taluk & District.

4. S. Tamilselvi

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying
for issue of a Writ of Certiorarified Mandamus to call for the records from

the file of the 1st respondent herein in Na.Ka.En.10574/2008 sa.vu.thi. -1-8 dated 12.09.2009 issued to the fourth respondent, quash the same and for a mandamus directing the respondents to appoint the petitioner as Noon Meal Organiser in the Panchayat Union Middle School, Kallayee Village, Thiruvannamalai District.

For Petitioner :: Mr.Venkat for
Mr.M. Premkumar
For Respondents :: Mr.K. Tippu Sultan,
Govt. Advocate for R1 to R3
Mr.P. Punniyakoti for R4

ORDER

The present writ petition has been filed for issue of a Writ of Certiorarified Mandamus to call for the records from the file of the 1st respondent herein in Na.Ka. En.10574/2008 sa.vu.thi -1-8 dated 12.09.2009 issued to the fourth respondent, quash the same and to direct the respondents to appoint the petitioner as Noon Meal Organiser in the Panchayat Union Middle School, Kallayee Village, Thriuvannamalai District.

2. The case of the petitioner is that she belongs to Most Backward Community (Vanniyar) and she has studied upto XII standard. A news item was published in “Dinamathi” dated 18.12.2008 stating that qualified candidates can apply for the post of Noon Meal Organiser and Assistant in the Noon Meal Centres in Thiruvannamalai District. By notification dated 19.12.2008, suitable candidates were called for, for the post of Noon Meal Organiser and one of the eligibility criteria is that the candidate should reside in the same village in which the Noon Meal Centre is situated. As the petitioner was residing at Kallayee Village, she applied with necessary documents and she was called for an interview on 31.12.2008. She attended the interview on 12.01.2009. She was successful in the interview and selection list dated 04.02.2009 was published and she was awaiting appointment order. The writ petitioner was informed that orders will be issued by the Hon’ble Minister for Food Supplies on 12.09.2009 in the office of the Collector. A photograph depicting the petitioner receiving the orders from the Hon’ble Minister along with other officials was also published in “Dhinamathi” on 30.09.2009. After receipt of the order, the petitioner was told that there was some typographical error in the order and

the same has got to be corrected and the order copy was taken back from her. To the shock of the petitioner, instead of giving the appointment to the writ petitioner, namely. P. Tamilselvi, one S. Tamilselvi, who is the fourth respondent herein, was appointed in the place of the petitioner. It is stated that the order was issued purporting to be issued by the Collector, Thiruvannamalai, but, no order of cancellation was issued to the petitioner. According to the petitioner, the fourth respondent is not a qualified person. The petitioner would state that the order of cancellation was not served on her. According to the petitioner, though she is a resident of the same village, without giving appointment to her, the fourth respondent has been issued with the appointment order.

3. Notice has been served on all the respondents, including the fourth respondent.

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4. The official respondents would contend that as the fourth respondent was well within the age limit and residing within 3kms radius

from the place of posting, her name was considered and that there are no mala fides or nothing fishy in giving the appointment order to the fourth respondent. The allegation that the Minister was involved with regard to the appointment is totally incorrect and unwarranted. In terms of the advertisement dated 19.12.2008, which was published in “Dhinamathi”, the case of the fourth respondent was considered and there is no irregularity in appointing the fourth respondent.

5. Heard both parties.

6. When the matter was heard, this Court initially had suspicion with regard to the appointment of the writ petitioner and this Court thought that the writ petitioner intended to dislodge the fourth respondent. However, to get a clear picture, more so, when allegations have been made against the Minister, called for the files. An official, by name, M. Ranjith Kumar, Assistant, Collectorate (NMP), Thiruvannamalai produced G.O. (Ms) No. 163 Social Welfare and Nutritious Meal

Programme dated 18.08.2010 to show that the candidate for the post of Noon Meal Organiser can reside within a radius of 3Kms. The said Government Order may not be applicable to the facts of this case as the recruitment itself is pursuant to the advertisement dated 19.12.2008, two years prior to the issuance of the Government Order and the Government Order cannot be made applicable retrospectively.

7. On going through the files, it has been confirmed by the learned counsel for the official respondents that the writ petitioner P. Tamilselvi was residing locally whereas the fourth respondent S. Tamilselvi was residing within 2 Kms radius from the place of posting. This Court would also like to extract the requirement for the purpose of appointment in the place where the writ petitioner seeks appointment:

सतयमेव जयते

"அமைப்பாளர் பணிக்கு 25 வயது நிரம்பியவர்களாகவும் 40 வயது மிகாதவர்களாகவும் இருக்கவேண்டும். (15.12.08 அன்று) எஸ்.எஸ்.எல்.சி தேறியவர்கள் மற்றும் தவறியவர்கள். காலிப்பணியிடம் உள்ள மையம் அமைந்துள்ள கிராமத்தில் வசிப்பவராக இருக்க வேண்டும். அங்கு தகுதியானவர்கள் இல்லை எனில் காலிப்பணியிடமுள்ள அதே ஊராட்சிக்கு உட்பட்ட குக்கிராமங்களில்

வசிப்பிடமாக கொண்டவர்களுக்கு முன்னுரிமை அளிக்கப்படும். அவ்வாறும் தகுதியானவர்கள் இல்லை எனில் அவ்வூராட்சியை ஒட்டியுள்ள 10கி.மீ. மிகாமல் உள்ள ஊராட்சியை சேர்ந்தவராக இருத்தல் வேண்டும். காலிப்பணியிடத்திற்கு உரிய இனசுழற்சி முறையில் வரும் இனத்தவரே தேர்ந்தெடுக்கப்படுவர். (சம்பந்தப்பட்ட ஊராட்சி ஒன்றிய மற்றும் நதராட்சி ஒன்றிய மற்றும் நகராட்சி அலுவலக விளம்பர பலகையில் காலிப்பணியிடம் மற்றும் இன சுழற்சி முறை குறித்து ஆணையரால் விளம்பரம் செய்யப்படும்). விண்ணப்பத்துடன் ரேஷன் கார்டு, இருப்பிடச் சான்று, சாதிச்சான்று, விதவை/கணவரால் கைவிடப்பட்டோர் சான்று மற்றும் கல்விச் சான்றின் நகல்கள் இணைக்கப்படவேண்டும். தமிழறிவும் சுயமாக சத்துணவு திட்ட கணக்குகளை பராமரிக்கவும் தெரிந்திருக்க வேண்டும்.

உதவியாளர்கள் பணியிடத்திற்கு 25 வயது நிரம்பியவர்களாகவும் 40 வயது மிகாதவர்களாகவும் இருக்க வேண்டும் (15.12.08 அன்று). எழுதவும் படிக்கவும் நன்கு தெரிந்திருக்க வேண்டும். காலிப்பணியிடம் உள்ள மையம் அமைந்துள்ள கிராமத்தில் வசிப்பவராக இருக்க வேண்டும். அங்கு தகுதியானவர்கள் இல்லை எனில் காலிப்பணியிடமுள்ள அதே ஊராட்சிக்கு உட்பட்ட குக்கிராமங்களை வசிப்பிடமாக கொண்டவர்களுக்கு முன்னுரிமை அளிக்கப்படும் அவ்வாறும் தகுதியானவர்கள் இல்லை எனில் அந்த ஊராட்சியை ஒட்டியுள்ள 10 கி.மீ. மிகாமல் உள்ள ஊராட்சியை சேர்ந்தவராக இருத்தல் வேண்டும். ரேஷன் கார்டு, இருப்பிடச் சான்று, சாதிச்சான்று, விதவை/கணவரால் கைவிடப்பட்டோர் சான்று மற்றும் கல்விச்சான்று நகல்கள் விண்ணப்பத்துடன் இணைக்கப்படவேண்டும்."

8. From a reading of the advertisement, it is very clear that the candidate for the post of Noon Meal Organiser should reside in the same village. Admittedly, the writ petitioner is residing in the same village while the fourth respondent is residing at a distance of 2 Kms away from the place of work. This Court is unable to conclude whether there is involvement of the Minister or not as the Minister has not been made as a party though allegations have been made against the Minister. However, manipulations have taken place in order to accommodate the fourth respondent, who was served with the notice and represented by a counsel and was also heard. Today, in the virtual hearing, neither the fourth respondent nor the learned counsel for the fourth respondent is present. The matter is posted today only for the purpose of verifying the records as this Court already heard the matter in detail.

9. The contention of the official respondents that the writ petitioner is aged only 26 years while the fourth respondent is aged 36 years and she may not get a chance for appointment in future cannot be a ground to grant appointment to the fourth respondent. As per the notification,

candidates from other areas could be considered provided no other person is available in the same village. As the writ petitioner, admittedly, is from the same village, the appointment order was issued to her and for the purpose of correction, it was taken. However, the initial has been manipulated and the appointment order has been issued in the name of the fourth respondent.

10. For the reasons stated above, the appointment order issued to the fourth respondent dated 12.09.2009 shall stand quashed. As the employment given to the fourth respondent itself is illegal, she will not be entitled to any other monetary or terminal benefits for the service rendered, as the entry in service itself is illegal. When the entry itself is illegal, that fourth respondent illegally usurped the post due to the petitioner, there is no need to conduct departmental proceedings as there is no master-servant relationship from the origin, i.e, the date of entry into service. The writ petitioner is entitled to employment and the petitioner shall be provided with employment within two days from today. The writ petition is allowed.

No costs.

S. VAIDYANATHAN,J.

nv

11. Post the matter for reporting compliance on 08.10.2021.

All the original records produced by the official respondents were returned to Mr.K. Tippu Sultan, learned Government Advocate.

04.10.2021

nv

(Note to Office: Issue order copy on 05.10.2021)

To

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2. Personal Assistant to the
District Collector (Noon Meal),
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