

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.28231 of 2023
and W.M.P.No.27749 of 2023

G.Karthikeyan

.. Petitioner

Versus

1. The Government of Tamil Nadu,
Rep. by Secretary to Govt.,
Labour & Employment Department,
Fort St. George,
Chennai.
2. The Government of Tamil Nadu,
Rep. by Secretary to Govt.,
Social Welfare and Women's Rights
(Sa.Na4-2) Department,
Fort St. George,
Chennai.
3. The Government of Tamil Nadu,
Rep. by Secretary to Govt.,
Social Welfare and Noon Meal Scheme Department,
Fort St. George,
Chennai.
4. The Personal Assistant to District Collector,
Nagappattinam.
5. The Commissioner,



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सत्यमेव जयते Panchayat Union - Keezhaiyur,
Nagappattinam Dt.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for records i) on the file of 2nd respondent in connection with G.O.No:48 Social Welfare & Women Rights (Sa.Na4-2) Dept. dt.18.08.2021, ii) on the file of 5th respondent in connection with Memo of Rejection in Na.Ka.No.3123/2021/A6 dt.01.04.2022, iii) on the file of 4th respondent in connection with Rejection Order in Na.Ka.No:001/SUT/2022 dt.28.10.2022 and iv) on the file of 4th respondent in connection with Rejection Order in Na.Ka.No:311/SUT/2023 dt.04.08.2023 and quash the same as ultra-virus and unconstitutional and consequently direct the 4th respondent to appoint the petitioner in any of the suitable post to which he is eligible on compassionate grounds by applying the principles of parity by re-considering the representation dt.03.07.2023.

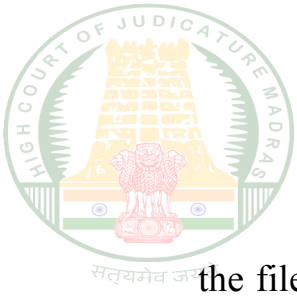
For Petitioner : Mrs.Aananthi.T

For Respondents : Mr.C.Jayaprakash,
Government Advocate
for RR-1 to 4

: Mr.P.Sanjay Gandhi,
Government Advocate for R5

ORDER

This Writ Petition is filed seeking to quash the G.O.Ms.No.48, Social Welfare and Women Rights (Sa.Na4-2) Department, dated 18.08.2021 on

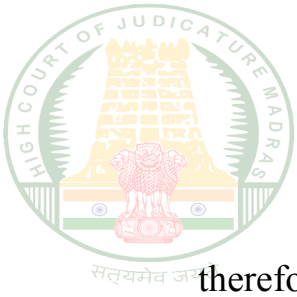


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the file of the second respondent, Memo of Rejection, dated 01.04.2022 on the file of the fifth respondent, rejection orders of the fourth respondent, dated 28.10.2022 and 04.08.2023 and consequently, to direct the fourth respondent to appoint the petitioner in any of the suitable post, to which, he is eligible on compassionate grounds by applying the principles of parity by re-considering his representation, dated 03.07.2023.

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,



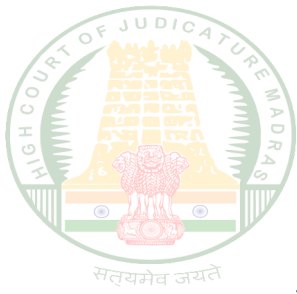
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therefore, has filed this present Writ Petition challenging the G.O.Ms.No.48, dated 18.08.2021 and the orders, dated 01.04.2022, 28.10.2022 and 04.08.2023.

3. This Writ Petition is resisted by the fifth respondent by filing counter-affidavit. It is the case of the respondents that the Government Order has already been upheld by this Court and the challenge to the said Government Order cannot be entertained by this Court once again.

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.



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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.

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



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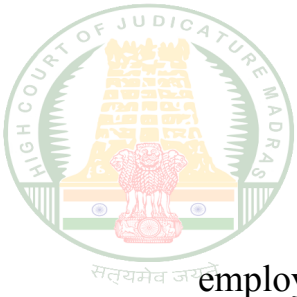


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respondents to provide employment to the petitioner as Noon Meal Organizer on compassionate ground or in any entry level post by taking into account of his indigent circumstances and it terms of order made in W.A.(MD) No.702 of 2007 dated 08.01.2008 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



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employee has left only a 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.

10. In view thereof, this Writ Petition is allowed on the following terms :-

(i) The Government Order in G.O.Ms.No.48 Social Welfare & Women Rights (Sa.Na4-2) Dept. dt.18.08.2021 is declared to be illegal and



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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 orders, dated 01.04.2022, 28.10.2022 and 04.08.2023 shall stand quashed;

(iii) The respondents are directed to forward the application of the petitioner to the District Collector, Nagapattinam district for consideration for employment in any other suitable posts along with other candidates according to the seniority subject to the eligibility of the petitioner;

(iv) The said exercise of forwarding it to the District Collector, Nagapattinam district shall be completed within four weeks from the date of receipt of a copy of this order;

(v) Upon receipt of the said application, the District Collector, Nagapattinam district may consider the same 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;

(vi) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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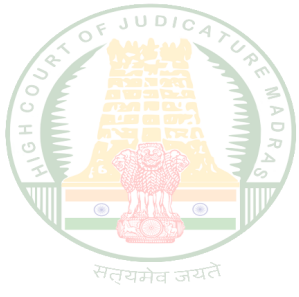
Neutral Citation : yes/no



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To

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Labour & Employment Department,
Fort St. George,
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2. The Secretary to Government,
Social Welfare and Women's Rights
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D.BHARATHA CHAKRAVARTHY, J.

grs

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