

(2017) 01 MAD CK 0144

In the Madras High Court

Case No : W.P.(MD)No. 7828 and 7829 of 2010 and M.P.(MD)No.1 and 2 of 2010
in W.P.(MD)No. 7828 of 2010

Ramasundari

APPELLANT

Vs

The District Collector, Virudhunagar District, Virudhunagar.

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226, Article 311

Citation : (2017) 2 MLJ 224

Hon'ble Judges : Mr. R. Suresh Kumar, J.

Bench : Single Bench

Advocate : Mr. J. Gnanaseelan Muthiah, Government Advocate, for the Respondents No. 1 & 2; Mr. Pala Ramasamy, Advocate, for the Respondent 3; Mr. G. Marimuthu, Advocate, for the Petitioner

Final Decision : Disposed off

Judgement

Mr. R. Suresh Kumar, J. - Since common issues are involved in these writ petitions, they were heard together and disposed of by means of this common order.

2. In both the writ petitions, the respective petitioners have sought for a writ of certiorarified mandamus to quash the orders passed by the 1st respondent vide proceedings dated 08.06.10, whereby the request of the petitioners to get reappointment as Noon Meal Cook had been rejected.

3. The facts of the case in W.P. No.7828/2010 is that the petitioner was appointed as Cook in Noon Meal Centre at Veerapandia Kattabomman Private Elementary School, Rajagopalapuram, Thiruchuli Panchayat Union, Virudhunagar District on 25.03.1994. The said school is an Aided school. After having been appointed as such, the petitioner had been working in the said school as Noon Meal Cook for more than 10 years and in the month of July 2004, the Government had decided to close down the Noon Meal Centre functioning in the said School, with the result, the petitioner become jobless. The closure of the

Noon Meal Centre in the said School was because of the School itself was closed. Thereafter, the petitioner was not given any alternative employment or she was not given appointment or transfer or posting as Noon Meal Cook at any of the School within the said Panchayat Unit or anywhere in the District. Therefore, the petitioner was waiting for a communication from the respondents for giving her appointment in any other Noon Meal Centre in the nearby locality. For nearly about 6 years, there were no such communication from the respondents and in the year 2009, the petitioner came to know that the Government decided to start a Panchayat Union Primary School at a Village called Rajagopalapuram, which is, in fact, the native village of the petitioner. Hence, she has submitted an application on 16.06.2009 to the respondents for considering her candidature for the post of Noon Meal Cook, as the Noon Meal Centre going to be attached in the newly established school at Rajagopalapuram. The said request of the petitioner has been turned down by the order of the 2nd respondent dated 08.06.2010. Challenging the same, the petitioner has come out with this writ petition.

4. Insofar as W.P. No.7829/2010 is concerned, the facts are almost similar, as this petitioner also had been appointed on the same day along with the other writ petitioner as Noon Meal Cook in the Noon Meal Centre at the said school, namely, Veerapandia Kattabomman Private Elementary School and since the said school was closed in the year 2004, she also become jobless and she also along with the other writ petitioner had submitted an application on 16.06.2009 on coming to know the fact i.e., the school is going to be opened at Rajagopalapuram, where a noon meal centre is also going to be established and such request also has been turned down by the 2nd respondent in the impugned order dated 08.06.2010. Challenging the same, the petitioner has come out with this writ petition.

5. The only difference of facts between the petitioners, namely Ramasundari (W.P.No. 7828/2010) and Bommakkal (W.P.No. 7829/2010) is concerned, insofar as the petitioner Ramasundari is concerned, after her services were dispensed with, in view of the closure of the School, where she was worked, there was no further offer to the job of Noon Meal Cook in any other School till the petitioner makes an application in the year 2009. However, in respect of the case of that Pommakkal, who is the petitioner in W.P.No.7829/2010, after she lost the job along with the other writ petitioner, the respondents especially under the proceeding of the third respondent in Na.Ka.No.4/1908/04 dated 09.09.2004, offered to the petitioner the same job of Noon Meal Cook at a School in a place called Kanakki. Though such an offer was made and order to that effect was passed by the third respondent offering the job to the petitioner, namely, Pommakkal, she had not responded to the said offer and she had not joined in the said Noon Meal Centre at Kanakki.

6. Heard the learned counsel for the petitioners and the learned Additional Government Pleader for the respondents 1 and 2 and the learned standing counsel for the 3rd respondent.

7. The learned counsel for the petitioners would contend that the petitioners were appointed as Noon Meal Cooks in the School referred to above in the year 1994, since then, they had been working continuously for more than 10 years. Once the school was closed, naturally, the Noon Meal Centre also had been closed and therefore, both the petitioners become jobless. Once if they lost the job, because of the closure of the Noon Meal Centre, certainly, the respondents should have utilised the services of the petitioners in some other Noon Meal Centres either in the 3rd respondent Panchayat Union or at least in any of the Noon Meal Centre attached with any Government or aided school located in the District. As there were a number of vacancies available continuously in several Noon Meal Centres, no such offer was made and therefore, the petitioners had been waiting to get a communication/order or offer from the respondents and nothing had come for more than five years. Only at that juncture, since in the year 2009, the Government had proposed to start a School at a place called Rajagopalapuram, which happens to be the native place of these petitioners, both the petitioners had made application on 16.06.2009 to the respondents seeking for the job of Noon Meal Cook at the Noon Meal Centre going to be attached/established in the newly started school at Rajagopalapuram. Since it is a new school to be started, certainly, the noon meal centre will require one Noon Meal Organiser and two Noon Meal Cooks, therefore, both the petitioners could have been accommodated in the said Rajagopalapuram School. However, their requests have been rejected by the first respondent through the impugned orders passed separately in respect of each of the petitioner herein and therefore, the impugned orders are totally arbitrary and are unjustifiable.

8. The learned counsel for the petitioners would also contend that insofar as the petitioner, namely, Ramasundari is concerned, she is running only 48 years now and so far as the other petitioner, namely, Pommakkal is concerned, she already attained the age of 58 years. In view of the said fact, Pommakkal may not be considered for any reinstatement, as she had already attained the age of superannuation, therefore, whatever the service benefits including the pensionary benefits available to a Government servant shall be extended to the said petitioner, namely, Pommakkal. In this regard, the learned counsel for the petitioner would also rely upon a judgment of this Court reported in 2007(3) CTC 806 in the matter of G. Periannan v. Government of Tamil Nadu represented by the Secretary to Government, Social Welfare and Nutritious Meal Department and others. By relying upon the said judgment, the learned counsel for the petitioners would contend that Noon Meal Organiser is also a Government Servant within the meaning of Article 311(2) of the Constitution of India and therefore, whatever rights and privileges available to other Government servants shall also be extended to a Noon Meal Organiser. When that being so, the same yardstick also to be applied in case of the petitioners also, where the said Pommakkal, since has attained the superannuation, her candidature can be considered for extending the retirement benefits including pensionary benefits.

9. The learned counsel for the petitioners would contend that admittedly, the

petitioners had completed more than 10 years of service, hence they would be eligible for minimum pension within the meaning of Tamil Nadu Pension Rules, 1978. Therefore, the learned counsel for the petitioners would submit that insofar as the petitioner, namely, Ramasundari is concerned, reinstatement can very well be ordered and insofar as the petitioner Pommakkal is concerned, pensionary and other service benefits shall be directed to be given to her.

10. Per contra, the learned Additional Government Pleader would contend that insofar as the case of Pommakkal is concerned, the impugned order is very clear, where after the said petitioner having lost the job, in view of the closure of the School, where she worked, the third respondent, by proceeding dated 09.09.2004, had in fact, offered the same job to the petitioner at a Noon Meal Centre located in a place called Kanakki, in spite of the said offer had been given and a proceeding on that effect was issued by the third respondent, the said petitioner Pommakkal has not accepted the same and in fact, not at all responded to the said offer of posting. When that being so, the said petitioner herself did not care about for getting the job once again and to continue in the same job, the question of considering her, even for the pensionary benefits as claimed by the petitioner would not arise at all.

11. The learned Government Advocate would also submit that insofar as Ramasundari is concerned, the said petitioner though had lost her job in the year 2004, had not at all requested to the respondents by even a single communication or request expressing her willingness to work in any other Noon Meal Centre located either in the Panchayat Union of the third respondent or in the District. Since the post of Noon Meal Cook is lower level job and that too, a part time job, normally, people, who are living nearby locality, would be chosen for the said job. Since the said Ramasundari has lost the job, she did not express her willingness to work in any other Noon Meal Centre in the District was probably because of the distance between the native place, where the said petitioner is residing and the vacancy available in any other Centre in the District concerned. Therefore, for all probability, it can be presumed that the said petitioner has, in fact, given up her right to claim the said post in any other Noon Meal Centre. After nearly about five years, only in the year 2009, the petitioners had made applications to the respondents to get back the job, that too, after having come to know that a school is going to be located in a place called Rajagopalapuram, which happens to be the native place of the petitioners. This act of the petitioners would clearly establish that these petitioners did not have any willingness to work in other place other than their native place. That is the reason why even the offer given to the petitioner, namely Pommakkal, has not been utilised by her. Therefore, there is no infirmity in the orders impugned passed by the 2nd respondent, as the 2nd respondent, after considering the merits of the case of these two petitioners and after having considered the past history, where the offer given to one of the petitioner was turned down, the present impugned order has been passed. Therefore, there is no necessity to interfere in the impugned orders, he contended.

12. This Court have considered the said rival submissions made by the learned respective counsel.

13. The facts are almost admitted and nothing has been specifically controverted by the respondents. Both the petitioners had been appointed as a Noon Meal Cook in a school in the year 1994, where they had been continuously working for more than 10 years. During the year 2004, since the school was closed, there was no option for the authorities except to close down the Noon Meal Centre also. Because of the closure, both the petitioners lost their job. The Noon Meal Cook post, where these petitioners had been working for more than a decade, certainly created a right on the petitioners to claim continuity in service, if not in the same place, where they worked, but in some other Noon Meal Centres located in the Panchayat Union or at least in the Revenue District. Therefore, once the petitioners Noon Meal Centre is closed, the respondents should have offered postings to the petitioners to any other Noon Meal Centre. In this regard, insofar as the petitioner namely, Pommakkal is concerned, as has been mentioned in the very impugned order itself, an offer was made by the third respondent on 09.09.2004 vide his proceedings in Na.Ka.No.A4/1908/04 to the said petitioner for the same job at a Noon Meal Centre in a place called Kanakki. Though the said offer was made to the said petitioner Pommakkal, the same was not utilised by her. Therefore, we cannot find fault with the attitude of the respondents, insofar as the said petitioner is concerned.

14. However, in respect of the another petitioner, namely, Ramasundari is concerned, even no such offer, as has been made to the said Pommakkal, has been made. Therefore, after the said Ramasundari has lost the job in the year 2004, no offer of appointment or posting in any other noon meal centre located in the Union or District, has admittedly been made by the respondents. Therefore, the respondents cannot now turn around and say that the petitioners did not have any interest and did not have any willingness to work in any other school. If any offer made to this petitioner, namely, Ramasundari, and the same is also turned down, as in the case of the other petitioner, then, the said argument advanced on behalf of the respondents can be accepted. However, in the case of the said Ramasundari, no such offer is made, therefore, this Court has no hesitation to have a view that the said Ramasundari though had been waiting for a job or communication to that effect from the respondents, no such offer has been made till the petitioner herself made a request on 16.06.2009, naturally, on coming to know the fact that a new school is going to be opened at a place called Rajagopalapuram, which, of course happened to be the native place of the said petitioner.

15. Insofar as the said Pommakkal is concerned, who is the petitioner in W.P.No.7829/2010, the offer made to her has not been utilised by her. Therefore, she is not entitled for any reinstatement or back wages or any other benefits. But, insofar as the petitioner in W.P.No.7828/2010 is concerned, the said petitioner is entitled to get the job. In this regard, when this Court specifically

directed the learned Additional Government Pleader to get instructions as to whether any vacancy in the Noon Meal Centre is available in the third respondent Union, in response to the said query raised by this Court, the learned Additional Government Pleader has informed to this Court that vacancies are there in some of the Noon Meal Centres located in the third respondent Panchayat Union.

16. Insofar the legal plea raised by the petitioner by quoting the said judgment in 2007(3) CTC 806 cited supra is concerned, the learned Judge of this Court has passed the following order as to the status of Noon Meal Organiser, which reads thus:

"14. Applying the above principles, laid down in the above cited decision and various other judgments relied on in the said judgment, to the facts of this case and having regard to the fact that the petitioner was appointed as Noon Meal Organiser in terms of the Government Order issued and the posting and transfer orders of the posts having been issued by the officials of the State and the salary of the petitioner having been paid from the State funds allocated under the budget allocation, I am of the firm view that the Noon meal Organiser post is a civil post and therefore, Noon meal Organiser is entitled to have protection under Article 311(2) of the Constitution of India, which clearly states that no person, who is a member of a civil service of the Union or a State or holds a civil post under the Union or a State shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

17. In view of the said decision, there can be no further quarrel that the Noon meal Organiser and Noon Meal Cook are also Government servants within the meaning of Article 311(2) of the Constitution of India. Here, in this case in hand, these two petitioners have not been terminated, but have become jobless because of the closure of the Noon Meal Centre. Therefore, certainly, these two petitioners would be entitled to get a job of continuity, however, as held above, in case of the said Pommakkal, she had not utilised the offer, therefore, she would not be entitled for any job continuity or any other relief, service benefits etc. But, insofar as the said Ramasundari is concerned, she would be entitled to get back the said job of Noon Meal Cook.

18. Resultantly, the following orders are passed in these two writ petitions:

(i) The petitioner in W.P. No.7828/2010, shall immediately be posted as Noon Meal Cook in any of the vacant place of a Noon Meal Centre located in the third respondent Panchayat Union. Since this petitioner has not worked for all these years from 2004, she would not be entitled for any back wages, but at the same, in view of the law having been pronounced by this Court in the judgment referred to above, this petitioner would be entitled to get other service benefits, such as continuity of service and pay benefits etc. With these observations, W.P.No.7828/2010 is allowed and the impugned order is quashed.

(ii) Insofar as the petitioner in W.P.No.7829/2010 is concerned, she is not

entitled to claim the benefits of reappointment, as she had already attained superannuation, she would also not entitle to any other benefits including her continuity of service, since she has not utilised the offer made by the third respondent vide his proceedings dated 09.09.2004.

(iii) However, the petitioner in this writ petition (W.P.No. 7829/2010) shall be entitled to claim retirement benefits for the worked period, which, admittedly, is more than 10 years and if any such claim is made in this regard by this petitioner, the same shall be considered by the respondents herein on merits and in accordance with law within a period of four weeks from the date of such claim from the petitioner.

19. With these observations and directions, W.P.No.7829/2010 is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.