

N. Deiva Vs. the Collector,

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Court : Chennai

Decided On : Feb-25-2010

Judge : T. Raja, J.

Acts : [Constitution of India](#) - Articles 14, 16, 16(2) and 226

Appeal No. : W.P. No. 16164 of 2009 and M.P. Nos. 1 and 2 of 2009

Appellant : N. Deiva

Respondent : The Collector, ;The Personnel Assistant to Collector, (Noon Meal Scheme), ;The Commissioner, Alangay

Advocate for Def. : R. Anitha, AGP for R1 and R2,; V. Viswanathan, Adv. for R3 and;

Advocate for Pet/Ap. : G. Jeremiah, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

T. Raja, J.

1. The present writ petition is filed by N.Deiva, W/o. Anbarasan, seeking a writ of certiorarified mandamus calling for the records of the 1st respondent in

Na.Ka.PG1/1994/2008 dated 21.07.2009, quash the same and direct the respondents 1 to 3 to appoint the petitioner to the post of Noon Meal Organiser in Panchayat Union Primary School, Bankur, Vaniyambadi Taluk, Vellore District.

2. In response to the notification issued by the 1st respondent, District Collector, Vellore, calling for application for the post of Noon Meal Organiser and helpers within the age group of 25 to 40, the petitioner submitted her application along with certificates in support of her education, age and residence. The petitioner claims to possess all the required qualification as per the notification issued by the 1st respondent dated 23.12.2008. The requisite qualification for the post of Noon Meal Organiser is that:

(i) a candidate should have passed SSLC.

(II) a candidate should be in between the age group of 25 to 40.

(iii) a candidate should be a resident of the village, in which the noon meal centre is located.

Alternatively, it is also mentioned that if no local person is available, then a candidate, within a radius of 10 kms., could be considered for the said post. Since the notification has mentioned the vacancy for the post of Noon Meal Organiser, in respect of Alangayam Panchayat Union Primary School, Bankur Panchayat, the petitioner, being a local resident, has applied for the said post and awaiting for the selection to the said post of Noon Meal Organiser. On 21.01.2009, the 2nd respondent, the Personnel Assistant to Collector (Noon Meal Scheme, Vellore Collector's Office), called the petitioner for attending the interview to be held on 21.01.2009 along with all her testimonials. Out of 7 candidates, who participated in the interview for the post of Noon Meal Organiser in Alangayam Panchayat Union Primary School, Bankur Panchayat, the petitioner was the only local candidate, who met all the requirements for the selection to the said post. Further, the petitioner being a local candidate and has met all the requirements for the said post, honestly waited for an order of appointment from the 1st respondent, but shockingly, she learnt that the 1st respondent has appointed the 4th respondent, Tmt. Kavitha as Noon Meal Organiser. The action of the 1st respondent is fully

contrary and opposed to their own notification issued vide G.O.Ms. No. 203 Social Welfare-cum-Noon Meal Scheme (Social Welfare-7), Department, dated 19.08.2005, by which the Government has stipulated that for appointment to the post under the Noon Meal Scheme, the person should be a local resident of the village and if no local candidate is available, a candidate residing within the radius of 10 kms., could be appointed.

3. Learned Counsel appearing for the petitioner would pin point that the very same impugned order discloses clearly that the 4th respondent is a resident of Mullai Village, which is located beyond 10 kms. radius from Bankur Panchayat, where the noon meal centre is located. Being aggrieved by the impugned order appointing the 4th respondent to the said post, violating G.O.Ms. No. 203 Social Welfare-cum-Noon Meal Scheme (Social Welfare-7) Department, dated 19.08.2005, the petitioner has filed the present writ petition under Article 226 of [Constitution of India](#) to set aside the same and also prayed for a direction to appoint the petitioner to the post of Noon Meal Organizer in Alangayam Panchayat Union Primary School, Bankur Panchayat.

4. Denying all the submissions made by the petitioner, the 3rd respondent filed its written submission supporting the impugned order passed by the 1st respondent. The foremost contention raised by the 3rd respondent is that the impugned order does not suffer from any infirmity, because the 1st respondent has not violated the notification issued vide G.O.Ms. No. 203 Social Welfare-cum-Noon Meal Scheme (Social Welfare-7) Department, dated 19.08.2005. As per the said notification, the post of Noon Meal Organiser and Noon Meal Helpers should be filled in by meeting all the parameters envisaged in the above said notification. So far as the post of Noon Meal Organiser is concerned, a candidate should have passed in SSLC; the candidate should be in between age group of 25 to 40 and should also be a resident of the same village, where the Noon Meal Centre is located. However, if no local person is available, then a candidate within 10 kms. radius could be appointed for the said post. Whiles, in compliance of the above said notification, vacancy for the post of Noon Meal Organiser was notified in respect of Alangayam Panchayat Union Primary School, Bankur Panchayat. In response to that, an interview was conducted on 21.01.2009 for the said post. Out of 6

candidates, who attended the interview for the said post, no one answered the question properly except the 4th respondent. Therefore, in the best judgment of the 1st respondent, the 4th respondent of Mullai Village was selected on the ground of better performance in the interview and against ex-serviceman quota. Further, it was also mentioned by the learned Counsel appearing for the 3rd respondent that the Mullai Village is located within the radius of 10 kms. Since the 4th respondent, who was the only person, who answered all the questions put forth by the interview committee and the petitioner never answered any question, the 1st respondent came forward to consider the candidature of the 4th respondent and, accordingly, the 4th respondent was given appointment purely on the basis of merit as envisaged by the above said notification. Therefore, the 3rd respondent prayed for the dismissal of the writ petition.

5. Heard the learned Counsel appearing on either side and perused the materials available on record.

6. The challenge made by the petitioner against the appointment of the 4th respondent made by the District Collector, 1st respondent herein, on the ground that the 4th respondent of Mullai Village, which is situated 10 km away from Alangayam Panchayat Union Primary School, Bankur Panchayat, is not factually correct. Though the 4th respondent comes from Mullai village, but the same is not beyond the radius of 10 kms., but it is within a distance of 8.40 kms. only. Secondly, the notification in G.O.Ms. No. 203 Social Welfare-cum-Noon Meal Scheme (Social Welfare-7) Department, dated 19.08.2005, also clearly mentions that if no suitable person is available from the local village, a candidate within the radius of 10 kms., could be appointed to the said post. Whiles, the counter affidavit filed by the 3rd respondent indicates that the petitioner N.Deiva was found unsuitable by the interview committee as she failed to answer any of the question put to her. Therefore, the 4th respondent having faired better by answering all the questions in the interview, the 1st respondent thought it fit to appoint the 4th respondent, who is also equally qualified as per the notification in G.O.Ms. No. 203 Social Welfare-cum-Noon Meal Scheme (Social Welfare-7) Department, dated 19.08.2005, since she is also coming from a village, which is within the radius of 10 kms. The contention raised by the learned Counsel appearing for the petitioner

that the petitioner is a local candidate, who met all the requirements for the said post, cannot be a sustainable argument, when the interview panel has found the petitioner unsuitable to the post of the Noon Meal Organiser by certifying that the petitioner had not answered the questions. It is also important to keep in mind that the G.O.Ms. No. 203 Social Welfare-cum-Noon Meal Scheme (Social Welfare-7) Department, dated 19.08.2005, mentions that only the suitable candidate alone should be considered for the post. When the interview committee was of the view that the petitioner is unsuitable and 4th respondent alone is a suitable candidate, this Court, under Article 226 of the Constitution, cannot decide on what basis the petitioner was unsuitable and the 4th respondent was suitable. Further, this Court has entertained the writ petition only on the allegation made by the petitioner that the 4th respondent is a resident of Mullai Village, which is admittedly, 10 kms. away from the Alangayam Panchayat Union Primary School, Bankur Panchayat, but the Commissioner of Alangayam Panchayat Union, 3rd respondent herein, has filed the affidavit stating that the allegation made in the affidavit filed by the petitioner is absolutely false, as the distance from Baknur Village to Mullai village is only 8.40 kms. That apart, as per the guidelines issued by the Government, the selection has to be made by the interview committee and after conducting the said interview, the list of candidates are required to be sent to the District Collector, who is the 1st respondent herein, and he has to approve the selection on the basis of the recommendation of the interview committee. Since the 1st respondent has chosen the 4th respondent on the ground that she was more suitable on the basis of having answered all the questions put to her, the appointment of the 4th respondent cannot be found fault by the petitioner. Even the argument advanced by the learned Counsel appearing for the petitioner that as per the notification when a preference should be given to a candidate living in local village, the same notification itself has been violated, cannot be acceptable position of law, as this argument, if accepted, would go against the mandate of Article 16(2) of the [Constitution of India](#), because the preference mentioned in the notification to be given to the local candidate is based only upon a preference to a local candidate and not a basic qualification and if preference as interpreted by the learned Counsel for the petitioner, is extended solely based upon the residence of the candidate to the exclusion of other criteria like merit etc., the same will be hit by

Article 16(2) of the [Constitution of India](#). Further in the present case, the selection of the 4th respondent by the 1st respondent is also covered by the notification, which says that if a local person is not available, any person living within 10 kms. radius, could be considered for the said post. Further, in similar circumstances, this Court also in P. Vasantha and Ors. v. District Collector and Ors. reported in (2007) 6 MLJ 402, while dealing with appointment of anganwadi workers has held that proximity of the residents is only a preference but not a qualification by itself, as this otherwise will result in violation of Article 16(2) of the [Constitution of India](#). As repeatedly held by this Court as well as the Apex Court, no challenge can be entertained by the writ court, if an unsuccessful candidate challenges appointment of a selected candidate, after the selection process is over. Admittedly, in the present case, the selection process is over. Further, a counter has been filed by the 3rd respondent stating that the petitioner was not found suitable. No doubt, preference based upon the locality can be considered, but the same cannot be a basis for appointment to the post of Noon Meal Organiser. If the argument of the petitioner that preference based upon the locality alone should be considered, the same will not only be against the notification issued vide G.O.Ms. No. 203 Social Welfare-cum-Noon Meal Scheme (Social Welfare-7) Department, dated 19.08.2005, but the same will also be violative of Articles 14 & 16 of the [Constitution of India](#), for the simple reason that giving preference to a local resident to the exclusion of other criteria is not only unreasonable, but also gives for discrimination.

7. In this view of this matter, the writ petition filed by the petitioner is liable to be dismissed and accordingly, the same is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

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