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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.12.2016

DELIVERED ON: 10.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A.(MD)No.1127 of 2016
and
C.M.P.(MD).No.6944 of 2016

The Joint Director (Administration),
Highways Department,
Chepauk,
Chennai 600 005.

.. Appellant
3rd respondent
vs.

1.S.Jayanthi

... 1st respondent /
Petitioner

2.The Secretary to Government,
Government of Tamil Nadu,
Highways and Motor Ports Department,
Secretariat,
Chennai -9.

3.The Director General,
Highways Department,
Chepauk,
Chennai - 600 005.

.. Respondents 2 & 3/
Respondents 1 & 2

Writ Appeal has been filed under Clause 15 of the Letters Patent appeal, against the order dated 24.11.2015, passed by a learned Single Judge of this Court in W.P.(MD.No.20836 of 2015.

Prayer in WP(MD). 20836/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to consider the claim of the petitioner along with the others for appointment to the post of Junior Draughting officer by relaxing the maximum age limit fixed in the notification No. 12390/Nir 5 (1)/2014 dated 26.10.2015 application for filling up the post of Junior Draughting Officer in the highways department in respect of the petitioner.



For appellant

: Mr.N.S.Karthikeyan

Respondents

: Mr.R.Rengaramanujam

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JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.)

This writ appeal has been filed by the State viz., the Joint Director (Administration), Highways Department, Chennai, as against the order passed by the learned Single Judge of this Court in W.P.(MD).No.20836 of 2015, in which the learned Single Judge directed the third respondent herein to send appropriate proposals for regularisation of service of the petitioner, based on the proposals sent by the Divisional Engineer, Trichy, to the second respondent herein, within a period of four weeks from the date of receipt of the order and on receipt of such proposals, the second respondent herein shall, taking into account the fact that the first respondent herein has rendered more than 20 years of service, relax the age and other qualification, etc., and regularise the service of the first respondent herein.

2.0. The case of the first respondent before the Court below is that she has passed a Diploma in Civil Engineering Course in First Class in April, 1990 and registered her name in the Employment Exchange at Trichy. Thereafter, she continued to renew the same. While so, she has been engaged as Technical Assistant on NMR basis in the Highways Department from 01.08.1992 onwards. Since the petitioner belongs to forward community, her name was not sponsored, according to the seniority, by the Employment Exchange, during the earlier recruitment for the post of Junior Drafting Officer in the year 2003, due to which the persons, who joined after the petitioner in the NMR service and such of those who belong to Backward and Scheduled Caste Communities, got selected and were appointed even at the age of 40 and above.

2.1. On 03.10.2012 the Divisional Engineer, Highways Department, Trichy had prepared a list of candidates, who have completed more than 10 years of service as on 01.01.2006 for absorption in regular time scale of pay in terms of G.O.Ms.No.22, P & AR Department, dated 28.02.2006, in which the name of the petitioner was also included for absorption in regular time scale of pay and then, forwarded the same to the 2nd respondent. The 2nd respondent has also submitted the proposal to the 1st respondent for absorption and it was pending with the 1st respondent. While so, omitting the name of the petitioner, the other persons were appointed as Assistant Draughtsman in terms of G.O.Ms.No.265, Highways Department, dated 09.11.2007. Thereafter, a list of omitted candidates, who have completed 10 years of service, was



sent to the first respondent for absorption by the 2nd respondent and it was pending with the 1st respondent. While so, the Government passed G.O.Ms.No.74, P & AR Department, dated 27.06.2013 superseding the earlier G.O.Ms.No.22, P & AR Department, dated 28.02.2006 and therefore, the proposal for absorption, which was pending with the Government, was dropped in view of the subsequent development.

2.2. While so, on 26.10.2015, the respondents, without calling the applications through employment exchange, have called for applications through official website for filling up the existing vacancies of 188 Junior Draughting Officer by fixing the maximum age limit of 35 years in respect of SC/ST candidates, 32 years in respect of Backward Class candidates and 30 years in respect of other candidates. Though the petitioner served for more than 20 years on NMR basis she was recommended to be absorbed, due to the delay occurred at the instance of the respondents in considering the same, the petitioner was not appointed by the respondents. Now, in view of the fixation of maximum age limit for submitting the application for the post of Junior Draughting Officer, the petitioner could not participate in the open competitive examination also. Hence, she has come up with the writ petition for a direction to the respondents to consider her claim along with the others for appointment to the post of Junior Draughting Officer by relaxing the maximum age limit fixed in the notification No.12390/Nir5(1)/2014, dated 26.10.2015.

3.The learned Single Judge of this Court, vide order dated 24.11.2015, has held in paragraph Nos.5 & 6 as follows:

"5.Though the prayer is a different one, the learned counsel for the petitioner has submitted that a direction could be issued to the 2nd respondent to send appropriate proposals, based on the proposals of the Divisional Engineer, Trichy, referred to above, relating to regularisation of the service of the petitioner, to the 1st respondent, within a time frame and the 1st respondent could be directed to pass orders thereon, taking into account the service rendered by the petitioner for more than 20 years and by giving necessary relaxation by exercising its power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules.

6.In view of the narrow prayer made, the writ petition is disposed of with the following directions:

(i) The 2nd respondent is directed to send appropriate proposals for regularisation of the service of the petitioner, based on the proposals of the Divisional Engineer, Trichy, referred to above within a period of four weeks from the date of receipt of a copy of this order.



(ii) The 1st respondent is directed to consider the proposal that will be sent by the 2nd respondent, relating to regularisation of the service of the petitioner, taking into account the fact that the petitioner has rendered more than 20 years of service and to relax the age and other qualifications, etc., if necessary, by exercising its power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules, within a period of eight weeks from the date of receipt of a copy of this order."

4. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents. We have also perused the records carefully.

5. It is the submission of the learned counsel for the appellant / 3rd respondent that the relief granted by the learned Single Judge is contrary to the prayer made in the writ petition and therefore, the order passed by the learned Single Judge is liable to be quashed.

6. Admittedly, the petitioner has completed more than 20 years of service as daily wage employee and her name was also recommended for absorption in regular time scale of pay. While so,

the Government has issued an order vide G.O.Ms.No.74, P & AR Department, dated 27.06.2013, framing and formulating certain directives and guidelines for regularisation of the services of the daily wage employees. Based on the same, the respondents stalled the process for consideration of the appointment of the petitioner. According to the petitioner, the G.O.Ms.No.74, dated 27.06.2013, can have only prospective effect. The similar issue was considered by this Court in W.A.No.493 of 2016, vide order dated 25.04.2016 as well as in W.A.No.631 of 2016, dated 13.06.2016, wherein it has been held that the said G.O.Ms.No.74, dated 27.06.2013, can have only prospective effect, so as to say that the persons who would be completing 10 years of service on or after 27.06.2013 can alone be denied such consideration of regularisation of service.

7. Based on the above factual and legal aspects and also based on the request made by the learned counsel for the first respondent / Writ Petitioner, the learned Single Judge of this Court moulded the relief sought for and granted necessary relief. The relief granted by the learned Single Judge in accordance with the interest of justice cannot be said to be totally alien to the case and is also illegal. Therefore, we are not inclined to make any interference in the said order.



8. In the result, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar(T&P)

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Highways and Motor Ports Department,
Secretariat,
Chennai -9.

2. The Director General,
Highways Department,
Chepauk,
Chennai - 600 005.

+1cc to Mr.R.Rengaramanujan, Advocate SR.No.1886

+1cc to special Government Pleader SR.No.82976

gcg

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Judgment made in
Writ Appeal (MD) No.1127 of 2016
10.01.2017