

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.430 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri J.Sudheer, learned counsel for the appellant and the learned Government Pleader for Services and, with their consent, the appeal is disposed of at the stage of admission.

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge in WP.MP.Nos.11086 and 11041 of 2017 in WP.No.8909 of 2017 dated 20.03.2017. While WP.MP.No.11086 of 2017 was filed seeking a direction to the respondents to draw a year wise panel, and consider the claim of the petitioner for promotion in the subsequent panel year on completion of her penalty period, WP.MP.No.11041 of 2017 was filed to direct the respondents to promote the petitioner as an Assistant Commissioner of Labour on *ad hoc* basis.

In the order under appeal, the learned Single Judge observed that no positive direction, as sought for in the two miscellaneous petitions, could be granted at this stage, and such claim could only be considered at the time of consideration of the Writ Petition; and if the petitioner is otherwise eligible, there are vacancies, and if the respondents are taking steps to fill up the existing vacancies, the claim of the petitioner shall also be considered as per her eligibility and suitability on par with the others.

While Sri J. Sudheer, learned counsel for the appellant-writ petitioner, would express his reservation to the observation, in the

order under appeal, that the petitioner's claim should be considered only if the respondents are taking steps to fill up the existing vacancies, we find no error in the order under appeal as it is the right of the employer to decide whether or not the existing vacancies should be filled or whether the existing staff would suffice, justifying the vacancies being kept unfilled.

Sri J. Sudheer, learned counsel for the appellant, would request this Court to, at least, direct the respondents to consider the petitioner's case for appointment as an Assistant Commissioner of Labour on an *ad hoc* basis. While no mandamus can be issued to the Government to promote a particular officer, be it on a regular or on an *ad hoc* basis, the respondents can always be directed to consider the request of the petitioner, to be promoted on an *ad hoc* basis, in accordance with law along with all other eligible candidates.

We consider it appropriate, therefore, to direct the respondents herein to consider the petitioner's claim for promotion on an *ad hoc* basis, along with all other eligible candidates, at the earliest preferably within two months from the date of receipt of a copy of this order.

The Writ Appeal stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

6th April 2017
RRB