



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

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CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

W.A. [MD].No.1238 of 2018
and
C.M.P. (MD) .No.8663 of 2018
and
W.P. (MD) .No.17287 of 2018

The Commissioner,
Madurai Corporation,
Arignar Anna Malihai, Madurai. : Appellant/Respondent

Vs.

Asan Banu : Respondent/Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 02.08.2018 made in W.P.(MD). No.17287 of 2018, on the file of this Court.

Prayer in WP(MD)No.17287/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the Respondent in Ma.Ni.1/Ma.Ni.10/5046/2013 dated 25.07.2018, quash the same in respect of the petitioner is concerned and consequently directing the Respondent to retain the petitioner in the present working place i.e., Zone No.1 of Madurai Corporation.

For Appellant : Mr.T.S.Mohammed Mohideen

For respondent : Mr.K.Mahendran

**JUDGMENT*************[Judgment of the Court was delivered by M.M.SUNDRESH, J.]**

The respondent herein is working as a Record Clerk. The Writ Petition was filed on the ground of ill-health stating that the order of transfer will not allow her to work outside the building by going around to collect the tax. The learned Single Judge, by taking note of the health condition of the respondent/writ petitioner, was pleased to dispose of the Writ Petition and hence, the present Writ Appeal.

2. The learned Standing Counsel appearing for the appellant would submit that there is no material to hold about the physical condition of the respondent/writ petitioner. In any case, pursuant to the oral direction of this Court, the respondent/writ petitioner would be accommodated as a Record Clerk in the Corporation Main Building itself. Therefore, the grievance of the respondent/writ petitioner has been answered.

3. The learned counsel appearing for the respondent/writ petitioner would submit that the respondent/writ petitioner may be accommodated in any zone.

4. Considering the above, we are of the view that the request made by the learned counsel for the respondent/writ petitioner is very fair. After all, this Court cannot pass an order on health ground on a mere affidavit and the documents produced. The entitlement would come only on a factual recording, which could be done by referring the employee to the Medical Board, which has not been done in the present case. Now that the appellant has come forward with a proposal that the respondent/writ petitioner would be accommodated within the Corporation Main Building itself, she is not required to move and make collection outside the main building.

5. Though the learned counsel appearing for the respondent/writ petitioner would submit that the respondent/writ petitioner was victimized, we do not find any substance in the said submission. After all, to make out a case of malice either on fact or in law, there has to be sufficient material against the named persons, which will have to be proved by a person, who makes such allegation. However, in the case on hand, we do not find any material. This is also for the reason that the erstwhile officer, who is alleged to have taken action against the respondent/writ petitioner, has already reached the age of superannuation.

6. Accordingly, the Writ Appeal stands disposed of making it clear that the respondent/writ petitioner will have to be



accommodated in the Corporation Main Building itself within a period of two weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS-I)

+ 1 CC TO Mr.T.S.MOHAMED MOHIDEEN, ADVOCATE IN SR No. 84945
+ 1 CC TO Mr.K.MAHENDRAN, ADVOCATE IN SR No. 84928

NB

TE/SKN/SAR-1 : 03/10/2018 : 3P/3C

JUDGMENT MADE IN
W.A. [MD].No.1238 of 2018
18.09.2018