

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM :

The Hon'ble Mr.AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.23450 of 2019

and

W.M.P.No.23230 of 2019

Smt.K.S.Shanthi

..Petitioner

-vs-

1.The Government of Tamil Nadu,
rep.by its Secretary to Government,
Home (Courts) Department,
Fort St.George, Chennai-600 009

2.The Secretary to Government,
Labour & Employment Department,
Fort St.George,
Chennai-600 104

3.The Registrar General,
High Court, Madras,
Chennai-600 104

4.The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
High Court Compound,
Chennai-600 104

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records from the files of the 1st respondent in G.O.(2D) No.03, dated 03.01.2019 and quash the same and consequently direct the first respondent to regularize the services of the petitioner from the date she completed 10 years of service and pay salary and allowances from the date of such regularization and also pay regular pension from the date of superannuation within a time frame.

For Petitioner : Mr.Ramesh K.M.

For Respondents Mr.V.Jayaprakash Narayanan,
Govt.Pleader for R1 and R2
Mr.M.Kemp raj for R3 and R4

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard Mr.K.M.Ramesh, learned counsel for the petitioner and Mr.V.Jayaprakash Narayanan, learned Government Pleader for R1 and R2 and Mr.M.Kemp raj, learned counsel for R3 and R4.

2.We had our doubts about the entertaining of the Writ Petition by a Division Bench instead of by a learned Single Judge and it has been clarified by the Office that since the engagement of the petitioner was through the Civil Court, for the purpose of serving in the Industrial Tribunal, therefore, the same is entertainable by a Division Bench. We are not entering into the merits of this indication given by the Office, as we have our reservation about the same, but, in order to dispose of the matter and in order to not further prolong the agony of the parties to wait a decision by this Court, we proceed on the principle that a matter which is cognizable by a Single Judge can be heard by a Division Bench under the orders of the Chief Justice. Accordingly, we are proposing to dispose of this matter finally.

3.The contention of the learned counsel for the petitioner is that the petitioner had served the interest of the Tribunal, in practicality, as a full time employee, even though her engagement was captioned as a part time engagement, out of part time menial, being paid out of contingency funds. It is urged that the mere caption did not govern the status of employment of the petitioner, as she was almost a full time employee and it is for this reason that she had moved a representation for being treated at par with regular employees and be regularized as such.

4.We have also heard the learned counsel for the State and we are of the opinion that the sine qua non for seeking regularization, in terms of the Constitution Bench judgment of the Apex Court, in the case of State of Karnataka vs. Umadevi and Others [AIR 2006 SC 1806], is that the appointment may be irregular, but against a sanctioned post. In the instant case, the petitioner claims to have been sponsored by the Employment Exchange, but the fact remains that there is nothing on record to indicate that the post, against which the petitioner is

claiming regularization, was a sanctioned post. The question, therefore, to extend any other benefit, at par with any other claim or under a Scheme, does not arise in the wake of the aforesaid background and consequently, there being no indication of the manner of regular engagement in terms of any Rules prescribed or otherwise, the status of the employment of the petitioner, therefore, cannot by itself create a post, so as to extend the benefit of regularization. Consequently, we do not find any merit in the writ petition.

6.Learned counsel for the petitioner states that as a matter of redemption, there is a Government Order in G.O.Ms.No.348, Finance (Pay Cell) Department, dated 28.11.2017, under which, even such employees, as the petitioner, are entitled to a lumpsum payment of Rs.50,000/- plus a payment of pension of Rs.2000/- per month. It is also submitted that the said pension had been offered to the petitioner by the Tribunal, but since the petitioner had come up before this Court, seeking relief in the present petition, therefore, the same has not been availed of by her. This prayer has been opposed by the learned Government Pleader.

7.We leave it open to the petitioner to pray for such a relief, in case it is admissible and permissible, as urged by the learned counsel for the petitioner and move a request before the 4th respondent. In the event such an option is made and it is applicable to the case of the petitioner, then it will be open to the authority to pass an appropriate order in accordance with law.

The Writ Petition is, accordingly, consigned to records. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

msh/bbr

To

1.The Secretary to Government,
Home (Courts) Department,
Fort St.George,
Chennai-600 009

2.The Secretary to Government,
Labour & Employment Department,
Fort St.George,
Chennai-600 104

3.The Registrar General,
High Court, Madras,
Chennai-600 104

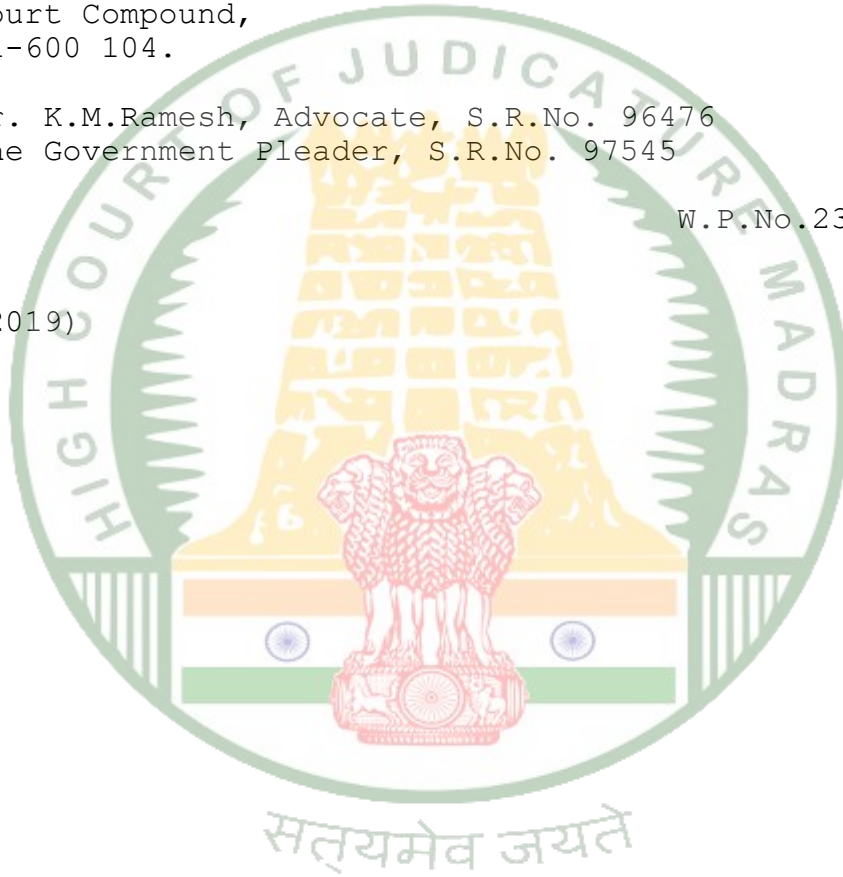
4.The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
High Court Compound,
Chennai-600 104.

+1cc to Mr. K.M.Ramesh, Advocate, S.R.No. 96476

+1cc to the Government Pleader, S.R.No. 97545

W.P.No.23450 of 2019

RK(CO)
GN(17/12/2019)



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