



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P. (MD) No.15336 of 2014

G.Shyamala

... Petitioner

Vs.

1.The Secretary to Government
Department of Commercial Taxes and Registration,
Fort St. George,
Chennai.

2.The Commissioner of Commercial Taxes,
Ezhilagam
Chepauk
Chennai.

3.The Joint Commissioner of Commercial Taxes,
Madurai Division,
Madurai.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to revise the petitioner's appointment as Junior Assistant with effect from her date of appointment (viz 14.07.1994) and further direct them to provide subsequent promotion by taking into account of her service rendered in the cadre of record clerk with effect from 14.07.1994 and in the cadre of Junior Assistant with effect from 08.09.1999 and in the cadre of Assistant with effect from 13.08.2007 along with back wages and other monetary benefits.

For Petitioner

:Mr.J.Pooventhera Rajan

For Respondents

:Mr.D.Muruganandham

Additional Government Pleader

ORDER

The relief sought for in the present writ petition is to direct the respondents to revise the appointment of the writ petitioner as Junior Assistant with retrospective effect from her initial date of appointment as Record Clerk from 14.07.1994. Further direction is sought for to provide promotion by counting the period of her services rendered in the cadre of Record Clerk with effect from 14.07.1994 as in the cadre of Junior Assistant

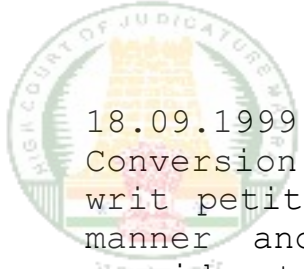


with effect from 08.09.1999 and in the cadre of Assistant with effect from 13.08.2007 along with backwages and monetary benefits.

2. The relief coined in the writ petition is the extreme form of greediness expressed by the writ petitioner. There is no end for greediness for humans. However, a public servant must realise that an opportunity to serve the public must be utilised with full devotion. Contrarily such retrospective claims are made based on certain ideologies, which are all impermissible under law.

3. The writ petitioner, admittedly, was appointed on compassionate ground on account of the sudden demise of her father, who was also an employee in the department. The writ petitioner was appointed in the available vacancy of Record Clerk during the relevant point of time on 09.06.1994. The Writ Petitioner accepted the post and joined. If at all the writ petitioner thought that she is fit to be appointed in a higher post, she ought not to have accepted the post of Record Clerk at all. At that moment, the writ petitioner thought that she has to enter into the Government service. With that idea, she entered into the Government service by accepting the post of Record Clerk. After joining, she has shown her real colours by stating that she should be appointed in the post of Junior Assistant. Such an attitude itself is to be deprecated. Such an attitude of a citizen cannot be encouraged by the Courts. Such claims cannot be granted as a matter of right.

4. The scheme of compassionate appointment itself is a concession. The claim of compassionate appointment, being a special scheme, is already held as violation of Articles 14 and 16 of the Constitution of India. Recruitment Rules were not followed, rule of reservation was not followed, merit assessment were not made. Simply on the ground of death of an employee, the benefit of compassionate appointment was given. What would be the efficiency level in public administration, if such appointments are provided in large scale. In the event of extending the scope of such special schemes unconstitutionally, we are losing the spirit of constitutional philosophy and ethos. Thus, the claim for compassionate appointment is to be restrained to the extent possible, so as to provide appointment only to genuine cases, where the family was in distress and in need of emergent help on account of the sudden death of an employee. This being the purpose and object of the scheme of compassionate appointment. The case of the writ petitioner was rightly considered by the authorities for providing appointment on compassionate ground. The writ petitioner was appointed as Record Clerk on 14.07.1994. She joined in the post. She was working in the post of Record Clerk till the
The Writ Petitioner was fortunate enough to get conversion to the post of Junior Assistant. The writ petitioner was converted from the post of Record Clerk to Junior Assistant on



18.09.1999. Such a conversion is unknown to service Rules. Conversion of post itself is a further concession extended to the writ petitioner. The writ petitioner was treated in a different manner and such a conversion was given mostly on extraneous considerations. Conversion of Record Clerk as Junior Assistant without following the promotional Rules or appointment Rules itself is an irregular administrative decision. However, the writ petitioner was serving in the post of Junior Assistant with effect from 18.09.1999. Having not satisfied with the conversion to the post of Junior Assistant, the writ petitioner had gone to the extent of setting out further claim of retrospective promotion in the post of Junior Assistant with effect from the date of her initial appointment as Record Clerk ie., 14.07.1994.

5. Now, the learned counsel for the writ petitioner pleads that the writ petitioner must be granted concession with retrospective effect from 09.06.1994 and all other consequential promotions to the post of Assistant and Superintendent as well as monetary benefits.

6. This Court is of the considered opinion that the writ petitioner was not appointed in accordance with the regular recruitment Rules in force. The writ petitioner was appointed on compassionate ground. The writ petitioner was granted with the benefit of conversion to the post of Junior Assistant on 18.09.1999. Such conversion itself is not in accordance with law. Junior Assistants are to be filled up only through the Tamil Nadu Public Service Commission, which is the post coming under the purview of Tamil Nadu Public Service Commission. Thus, conversion of the post of Record Clerk as Junior Assistant required a ratification and relaxation of Rules by the Government.

7. It is brought to the notice of this Court that the conversion was done with the consent of the Government, after obtaining opinion from the Tamil Nadu Public Service Commission. May that it be, this Court is of the opinion that such conversion cannot be granted in a routine manner. Conversion of post will cause discrimination and further deprive the eligible persons to get an opportunity to secure employment to the post of Junior Assistant. When the post of Junior Assistant is falling under the purview of Tamil Nadu Public Service Commission, proper recruitment is to be made to fill up the post, in the event of which, since the conversion of the post of Junior Assistant, the opportunity to the eligible candidates are denied and the actions became unconstitutional. However, in the present case on hand, promotion was granted by the Government. Under these circumstances, claiming of retrospective conversion with effect from the date of compassionate appointment is undoubtedly impermissible and such a benefit cannot be granted at all.

<https://hcservices.ecourts.gov.in/hcservices/>

8. This Court is of the further opinion that the employee, who was appointed on compassionate appointment and further



converted to the post of Junior Assistant, cannot claim that she is fully qualified for appointment to the post of Junior Assistant and therefore, she must be appointed to the post of Junior Assistant with retrospective effect.

9. When this Court asked a question as to the educational qualification of the writ petitioner, the learned counsel for the petitioner states that the writ petitioner has completed Higher Secondary Course. When lakh and lakh of youth of this great Nation are waiting for public employment after completion of Master degree and Ph.D. Degree, this Court is unable to accept the very contention of the writ petitioner that she must be appointed as Junior Assistant and her educational qualification is Higher Secondary Course. Thus, the very claim set out is not only unacceptable, but this Court cannot grant the relief of retrospective appointment in the post of Junior Assistant from the date of compassionate appointment.

10. For all these reasons, the writ petition is devoid of merits and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (crl side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government

Department of Commercial Taxes and Registration,
Fort St. George,
Chennai.

2.The Commissioner of Commercial Taxes,

Ezhilagam
Chepauk
Chennai.

3.The Joint Commissioner of Commercial Taxes,

Madurai Division,
Madurai.

+1cc to M/S.J.POOVENTHERA RAJAN, ADVOCATE, SR,NO.72881

+1CC TO M/S. SPECIAL GOVERNMENT PLEADER SR.NO.72454

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