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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.11.2021

PRONOUNCED ON: 09.11.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.17812 of 2010

P.Kumari

...Petitioner

Vs

The Registrar
Puducherry Engineering College,
Kalapet, Puducherry - 605 014.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus Call for the records relating to PEC/PA to Registrar 2010 dt.3.6.2010 on the file of the respondent and to quash the same and consequently direct the respondent to regularize the petitioner employment as per Sec.33(i) of PWD Act 1995 considering the qualification and experience.

For Petitioner : Mr.Jagadeesan

For M/s. K.V.Subramanian Associates

For Respondent : Ms.P.Dhanalakshmi

For Ms.N.Mala,
Government Pleader (P)

O R D E R

The Petitioner is visually impaired and her disability code and identity card numbers (part of the writ affidavit) have not been disputed by the sole respondent/Registrar of the Puducherry Engineering College, Puducherry. She has been working as a Caner in the respondent college since 1991 and is being paid piece rate. She holds an experience certificate issued by the respondent to the effect that she has been caning/re-caning the furniture of the Pondicherry Engineering College on piece rate basis at the rate fixed by the Government from time to time.

2. On account of her sustained engagement with the
<https://hcservices.secdutis.gov.in/hcservices/secdutisgovin> 18 years, she forwarded representation dated



18.11.2009 seeking regularization of her services with the respondent college. Admittedly, the opportunity for caning/re-caning of furniture has provided and continues to provide regular stream of work and this is the basis upon which she had sought regularisation. Her representation dated 18.11.2009 sought appointment in the college in the reservation provided under the Persons with Disabilities (Equal Opportunities Protection of Rights and full Participation) Act, 1995 (in short 'Act').

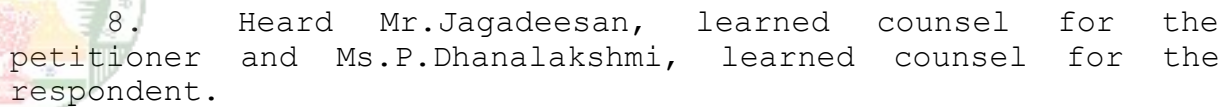
3. The respondent, however, did not process the representation, thereby constraining the petitioner to appear before this Court in W.P.No.24955 of 2009 seeking mandamus directing the respondent to consider her representation. The Writ Petition was ordered on 07.12.2009 directing the respondent to pass orders on the representation in accordance with law and on merits within a period of eight (8) weeks from date of receipt of a copy of that order.

4. Since even then there was no response, a Contempt Petition was filed in Contempt Petition No.547 of 2009 to punish the respondent for willfully neglecting to obey the order of this Court. Upon receipt of notice on the filing of Contempt Petition, the representation came to be rejected through proceedings dated 03.06.2010 without consideration of specific Rules and Regulations contemplated in regard to disabled persons.

5. According to the petitioner, the Act had been brought in solely to facilitate equal opportunity and the protection of rights of disabled persons. In specific, Section 33(i) of the Act provides for 3% reservation in the total vacancy in employment and thus the petitioner ought to have been accommodated in such vacancy and her services regularized.

6. It is hence that order dated 03.06.2010 has come to be challenged by the petitioner who questions the modus operandi followed by the respondent in making appointments to various posts in the college and in particular for not implementing the reservation policy for disabled.

7. The petitioner has reiterated the averments in the affidavit filed in support of the Writ Petition, pointing out that she had, even at the time of filing of the Writ Petition in 2010 crossed 40 years. Thus, at the time of hearing she would have crossed 51 years and thus has been engaged in caning/re-caning work on a regular basis with the institution for nearly three decades.



9. Initially the respondent sought time to obtain instructions, but thereafter all parties were of the unanimous view that the petitioner must be accommodated and her services regularized in view of the admitted facts as noticed in the aforesaid paragraphs. Thus, I had on 06.10.2021 recorded the unanimous acquiescence of the respondent to accommodate the petitioner on compassionate basis on account of her long service, though casual, and her handicap, directing the petitioner to make a written request in that regard, which was to be ordered by 26.10.2021.

10. When the matter came up on 26.10.2021, I was informed that her representation had come to be rejected on 07.10.2021, relying upon an order of the Division Bench of this Court in W.A.Nos.971 and 989 of 2017 dated 27.06.2018. A Writ Petition had been filed by members of the Scheduled Caste communities seeking a direction for filling up of post of Helpers reserved for Schedule Caste based on Notification dated 01.12.2005.

11. The learned single Judge had allowed the Writ Petition despite specific findings that the private respondents had not been sponsored by the Employment Exchange, they had not from the Scheduled Caste community and their appointment as Helpers on a casual basis had been by following a non-transparent selection process, as against which intra Court appeals had come to be filed by the Institution as well the Union Territory of Puducherry.

12. The Union Territory of Puducherry had acquired 1081 acres of land in the revenue villages of Pillaichavady and Kaladipet for establishing educational institutions in the year 1984. Out of the same, 200 acres had been allotted to the respondent institution and the remaining to the Pondicherry Central University. The Government, bearing in mind the interests of the persons from whom lands have been acquired, decided in policy to accord them preference in employment. 132 persons had come to be appointed in this category on Non-Muster Roll (NMR) and their services were subsequently regularized.

13. A Notification had come to be issued on 01.12.2005 calling for applications for appointment of daily wage basis for 17 posts earmarked for Scheduled Caste and 2 for physically handicapped persons. Another Notification was subsequently issued on 13.03.2008, calling for applications for filling up 38 vacancies of Helpers including 19 in General Category, 17 for Scheduled Caste and 2 for physically



handicapped. Those from whom lands had been acquired were to be given preference and the private respondents in the Writ Appeals had applied for the posts.

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14. Pursuant thereto, the respondent college had inducted private respondents as casual labour. They had not approached the employment exchange and the only justification was that the appointees are from 'land acquired category'.

15. The Division Bench notes that the private respondents (petitioners in that writ petition) had been appointed under the category of 'land affected persons', the lands of those private respondents have been acquired for establishing the Engineering College and it was pursuant to a policy decision taken by the Government that employment had been given. In fact, their appointments were not as against the posts reserved for members of Scheduled Caste community. It is thus that the Division Bench came to the conclusion that no transparent selection process had been followed.

16. The Writ Appeals were decided following the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others V. Umadevi and others ((2006) 4 SCC 1) wherein the practice of backdoor appointments and subsequent regularization had been deprecated as being in violation of Article 14 of the Constitution of India. Reference was also made in this context to a judgment of the Hon'ble Supreme Court in State of Rajasthan and others V. Daya Lal and others ((2011) 2 SCC 429).

17. In fine, the Institution was restrained from engaging employees either on daily rated/consolidated pay or on contract basis till the posts earmarked for Scheduled Caste were filled up after following transparent selection process. The Institution was also restrained from regularization of services of Helpers or employees working in any other non-sanctioned posts in case those employees were not through Employment Exchange or by resorting to an open selection process in line with the directions of the Hon'ble Supreme Court in the case of Uma devi (supra). It is this decision that has been cited by the respondent in rejecting the representation of the petitioner on 07.10.2021.

18. The aforesaid decision would apply only in the context of the appointments for the post of Helpers/applicants in Scheduled caste category/those who are seeking regularization under the lands acquired category. Despite repeated questioning, learned counsel for the respondent who is assisted by a representative of the Institution in Court, is unable to confirm what has been done in regard to filling up the vacancies in Scheduled Caste



category and also in regard to the lands acquired category from 27.06.2018. However, guest lecturers have, admittedly, been appointed in the interim.

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19. It also appears that interviews are on-going for the recruitment of Vice Chancellor and Registrar. Written instructions are circulated to the effect that after the Vice Chancellor and Registrar are recruited, the recruitment of Helpers/multi-tasking staff will be initiated and 'it might be completed within 6 months'. The instructions are as vague as can be and inspire no confidence whatsoever.

20. In the present case, the petitioner has approached this Court as early as in 2010 long before the decision of the Bench dated 27.06.2018 imposing the ban. Admittedly, there is no dispute on her visual impairment nor on the 28 years service that she has rendered caning/re-caning the furniture in the institution. Hence, I am of the view that the respondent should not be permitted to take undue benefit of order dated 27.06.2018 passed eight (8) years after the petitioner has approached this Court and I do not see why the petitioner should be made to wait indefinitely. It is also not as though the institution is not proceeding with recruitments, as recruitments in all other categories are on-going.

21. Thus on all counts as aforesaid, I am of the view that the petitioner must be accommodated in the college. Let the needful be done and order of appointment be issued within a period of four (4) weeks from today.

22. This Writ Petition is allowed in the aforesaid terms. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

The Registrar
Puducherry Engineering College,
Kalapet, Puducherry - 605 014.

Writ Petition No.17812 of 2010

KSM(CO)

<https://hcservices.ecourts.gov.in/hcservices/>
GMI (19/11/2021)