



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.19603 of 2016

N.Uma

... Petitioner

Vs

1.State of Tamil Nadu
rep. by Secretary to Government,
Highways Department,
Fort St. George,
Chennai - 600 009.

2.The Chief Engineer /
Principal Director,
Highways Department,
Guindy, Chennai - 600 025.

3.Superintending Engineer,
Highways Department,
Coimbatore - 641 018.

4.Divisional Engineer,
Highways Department,
Coimbatore - 641 018.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records leading to the issue of impugned order dated 10.01.2014 made in Ku.No. 4130/2013/Aa3 on the file of the 4th respondent and impugned order dated 17.01.2014 made in Ku.No. 3858/ 2013/ B1 case on the file of the 3rd respondent and quash the same and directing the respondents to appoint the petitioner on compassionate grounds in the suitable post as per the petitioner qualification within a stipulated time in the light of the G.O.(MS)No. 216 Labour and Employment Department (Q1) dated 16.11.2007 and Judgment of the Hon'ble Supreme Court reported in (2015)7 SCC 412.

For Petitioner

: Mr.T.N.Rajagopalan
for M/s.Sai Sathyajith

For R1 to R4

: Mr.J.Ramesh, AGP



ORDER

The relief sought for in this writ petition is to issue a writ of Certiorarified Mandamus calling for the records relating to the order dated 10.01.2014 made in Ku.No.4130/2013/Aa3 from the file of 4th respondent and the order dated 17.01.2014 made in Ku.No.3858/2013/B1 from the file of the third respondent and quash the same and consequently, directing the respondents to appoint the petitioner on compassionate grounds in the suitable post as per her qualification and in the light of G.O.(Ms)No.216 Labour and Employment (Q1) Department, dated 16.11.2007 and the decision of the Supreme Court reported in (2015)7 SCC 413, within a time frame to be fixed by this Court.

2. According to the petitioner, her father R.Nagarajan, while working as Gang Mazdoor in the office of the 4th respondent, died in harness on 18.12.2006. Seeking compassionate appointment, the petitioner made an application on 13.12.2007 well within the period of limitation, enclosing all the required documents to the fourth respondent, who, in turn, forwarded the same to the third respondent on 05.03.2009. However, the third respondent did not forward the said application to the second respondent and kept it pending assigning seniority as Sl.No.801. Though the petitioner made reminders dated 12.08.2010 and 17.11.2011, the same did not yield any result, which compelled her to file W.P.No.30612 of 2013, which by order dated 12.11.2013, was disposed of, directing the 3rd respondent to pass appropriate orders on the petitioner's representation within a period of twelve weeks. Pursuant to the same, the third respondent by the communication dated 10.01.2014, informed that the claim of the petitioner would be considered based on the seniority assigned to her. Citing the same reason, the third respondent sent a communication dated 17.01.2014 to the petitioner. Feeling aggrieved, the petitioner has come up with this writ petition for the aforesaid relief.

3. Upon notice, the fourth respondent filed a detailed counter affidavit inter alia stating that the petitioner will be provided appointment as and when the vacancies arise; and as on date, upto sl.no.563 were provided with jobs in respect of the post of Junior Assistants; and in this department, 449 applications are pending including the petitioner.

4. The averments so made in the counter affidavit filed by the fourth respondent have been seriously opposed by the learned counsel for the petitioner. According to him, as per G.O.Ms.No.216, Labour and Employment Department, dated 16.11.2007, if no vacancy is available in the department, the respondents shall accommodate the applicant, who are applying on



compassionate grounds, to other departments and hence, the petitioner may be accommodated to other department and provide her suitable job on compassionate grounds. The learned counsel further submitted that it was observed by the Supreme Court in Canara Bank v. Magesh Kumar [(2015) 7 SCC 413] that it is improper to keep such case pending for years and if there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant. Applying the same to the facts of the present case, wherein the petitioner has been waiting for more than 9 years and hence, she may be provided suitable job, based on her educational qualification.

5. Heard the learned Additional Government Pleader appearing for the respondents, who reiterated the averments made in the counter affidavit filed by the fourth respondent.

6. This Court also perused the documents enclosed in the typed set of papers.

7. Admittedly, the father of the petitioner died on 18.12.2006 while he was in service and the petitioner made application on 13.12.2007 for compassionate appointment, within the limitation period. However, the respondents have not considered the said application, stating that the appointment would be given to the petitioner, based on the seniority maintained by the department. Even now, i.e., after a lapse of 14 years, the respondents have not provided any job to the petitioner citing a vague reason that the claim of the petitioner would be considered, as and when vacancy arises and as per the seniority of the petitioner. The reason so adduced on the side of the respondents, that too, more than a decade, cannot be countenanced. Therefore, this Court finds it appropriate to direct the respondents to consider the claim of the petitioner, on merits, without any further delay.

8. Accordingly, this writ petition stands disposed of, directing the respondents to consider the claim of the petitioner for compassionate appointment and pass appropriate orders, on merits and in accordance with law and also in the light of the recent G.O.Ms.No.18, Labour and Employment Department, dated 23.01.2020, as expeditiously as possible preferably within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar



mtl

To

WEB COPY

- 1.The Secretary to Government
State of Tamil Nadu
Highways Department,
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- 2.The Chief Engineer /
Principal Director,
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- 3.Superintending Engineer,
Highways Department,
Coimbatore - 641 018.
- 4.Divisional Engineer,
Highways Department,
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+1cc to the Government Pleader, S.R.No.20543

W.P.No.19603 of 2016

SS(CO)
SB(14/07/2021)