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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18651 of 2021

(Through Video Conferencing)

V.Muthamilselvan

...Petitioner

Vs

1. The State of Tamil Nadu,
Represented by the Secretary to Government,
Department of Commercial Taxes and Registration,
Fort St.George, Chennai.

2. The Inspector General of Registration,
No.100, Santhome High Road,
Pattinampakkam, Chennai - 600 028.

3. The District Registrar (Administration),
Ariyalur Registration District,
Ariyalur.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to appoint the petitioner as Junior Assistant with effect from 31.10.2017 with all consequential service, monetary benefits and backwages.

For Petitioner : Mr.R.Saravanan

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The petitioner's father passed away on 08.10.2007. Thereafter, the petitioner was appointed as an Office Assistant on 31.10.2017 with the third respondent on compassionate ground.



2. It is the case of the petitioner on the date of his appointment as an Office Assistant, the petitioner was possessing higher qualification i.e., M.Com., M.L.

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3. The learned counsel for the petitioner submits that this issue has been addressed by the Government of Tamil Nadu in its G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 wherein, the Government has been enjoined to accommodate the persons appointed on compassionate ground depending upon the vacancy and the qualification. In this connection, a reference has made to Paragraph 2 from the aforesaid Government Order which reads as under:-

“2. Based on the orders issued in the G.O third read above a dependant appointed as Record Clerk on compassionate grounds is eligible for appointment as Junior Assistant but a dependant appointed as Office Assistant is not considered for appointment as Junior Assistant even though both were having the qualification for Junior Assistant at the time of appointment to a lower post. This amounts to discrimination. Therefore the Government have examined the proposal in detail to remove the discontent among the dependants appointed as basic servants and accordingly issue the following clarifications.

(i) A dependant appointed to a lower post like Record Clerk, Office Assistant and Sweeper on compassionate grounds but possess the qualification required for the post of Junior Assistant at the time of initial appointment to a lower post may be appointed as Junior Assistant/Typist. This concession is allowed only to those who have already been appointed to a lower post like Record Clerk, Office Assistant, Sweeper etc. The dependants should satisfy the conditions prescribed for consideration of appointment under compassionate grounds at the time of their appointment as Junior Assistant, Typists etc.

(ii) If the dependants who are appointed to lower posts like Sweeper, Office Assistant and



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Record Clerk with reference to their qualifications possessed at the time of their initial appointment and subsequently acquire qualifications prescribed for appointment as Junior Assistant/Typists they can be considered for appointment as Junior Assistant/Typist only with reference to Special Rules governing the post of Junior Assistant/Typist and not with reference to the scheme of providing employment assistance on compassionate grounds.

(iii) The appointing authorities under no circumstances should appoint a dependant to a lower post when the dependant possess the qualifications required for the post of Junior Assistant/Typist on the ground of non availability of vacancy in the office or department or the dependants not willing to work in other departments. In such circumstances they should follow the existing procedure of approaching the Collector of district for providing a suitable vacancy as suggested in G.O.Ms.No.1179 P & AR dated 17.10.79."

4. The learned counsel for the further submits that the issue was considered and decided by the Madurai Bench of this Court in the case of C.Prabakaran and another Vs The Secretary to Government, Chennai and others passed in W.P(MD).No.13354 & 13355 of 2013 dated 06.12.2018. The learned counsel for the petitioner drawn attention to Paragraphs 4 to 7 from the said decision which reads as under:-

"4.It is submitted that unaware of the Government Regulation, the petitioners' accepted the employment as a Record Clerk on Compassionate Ground even though both of them had passed S.S.L.C. which was the qualification prescribed for the post of Junior Assistant. In this connection, they referred to para 2(iii) of G.O.(Ms).No.1499, dated 03.08.1989 which reads as under:-

"The appointing authorities under no circumstances should appoint a dependent to a lower post when the dependent possess the qualifications required for the post of Junior



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Assistant/Typist on the ground of non availability of vacancy in the office or department or the dependents not willing to work in other departments. In such circumstances they should follow the existing procedure of approaching the collector of District for providing a suitable vacancy as suggested in G.O.(Ms).No.1179, P&AR, dated 14.10.1979."

5.The learned counsel for the petitioners submitted that under similar circumstances, the two of the employee like the petitioners had filed W.P. (MD)No.69 of 2010 and W.P.(MD)No.1685 of 2010 and had obtained an order dated 22.04.2010 and 06.08.2010 for treating his initial date of appointment as Junior Assistant with consequential relief.

6.Against the order, the respondents also preferred an appeal before the Division Bench which were disposed vide orders, dated 21.02.2011 in W.A. (MD)No.641 of 2010 and W.A.(MD)No.908 of 2010 without backwages. Similar relief was also granted to another employee in W.P. (MD)No.7896 of 2011.

7.As similar reliefs has also been given by implementing G.O. (Ms).No.95, Commercial Tax and Registration (A2) Department, dated 11.07.2013 and G.O.(Ms).No.99, Commercial Tax and Registration (A2) Department, dated 11.07.2013, wherein, Juniors have been given the benefit of being appointed as Junior Assistant from the date of their initial appointment, the petitioners should also be given the same benefit. Accordingly, these Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

5. It is submitted that the petitioner had sent a representation on 12.08.2021 to the respondents which has not evoked any positive response even though under similar circumstances, appropriate relief has been granted to the persons in terms of G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989.



6. Appearing on behalf of the respondents, the learned Government Advocate for the respondents submits that as a matter of fact, all the three existing Government Orders have been consolidated and a fresh Government Order has been issued in G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020. It is submitted that the respondents can give benefits, if any, to the petitioner only in terms of the G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020. He submits that the Government Order referred by the petitioner in G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 which was subject matter of the order of this Court in W.P(MD).No.13354 & 13355 of 2013 dated 06.12.2018 was also reviewed at Sl.No.14 as is evident from reference to G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020. He submits that rights under G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 if any has been subsumed by G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020 and therefore the request of the petitioner to be appointed as Junior Assistant at this point of time cannot be considered.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the Government Order in G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 and G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020. I have also perused the order passed by the Madurai Bench of this Court in W.P(MD).No.13354 & 13355 of 2013 dated 06.12.2018.

8. Though G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 has been subsumed into a consolidated G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020, the rights of the petitioner which stood recognized in G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 cannot be said to have been effaced in the wake of G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020. Though, comprehensive in nature it will apply prospectively to those appointments which are made after its issue it cannot be applied to persons like the petitioner who was appointed as early as 31.10.2017 as an Office Assistant. At the time of appointment of the petitioner on 31.10.2017, G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 was in force. Therefore, the case of the petitioner



has to be considered in the light of the the above Government Order.

9. Therefore, the respondents are directed to give effect to the aforesaid Government Order in G.O.Ms.No.1499, Labour and Employment (Q1) Department dated 03.08.1989 to the case of the petitioner from the date of his initial appointment on 31.10.2017 within a period of six weeks from the date of receipt of a copy of this order together with all attendant benefits.

10. This Writ Petition stands allowed with the above observations. No costs.

Sd/-
Assistant Registrar (CS)

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Sub Assistant Registrar

arb/nst

To

1. The Secretary,
Government of Tamil Nadu,
Department of Commercial Taxes and Registration,
Fort St.George, Chennai.
2. The Inspector General of Registration,
No.100, Santhome High Road,
Pattinampakkam, Chennai - 600 028.
3. The District Registrar (Administration),
Ariyalur Registration District,
Ariyalur.

+1CC to Mr.T.Saikrishnan, Advocate, Sr.No.45590
+1CC to Mr.Government Pleader, Sr.No.45567

W.P.No.18651 of 2021

KK (CO)
K.RK. (11.10.2021)