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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.22938 of 2014

A.Arunthathi

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Tamil Development,
Culture and Religious Department,
Fort St.George, Chennai-600 009.
 2. The Commissioner,
Hindu Religious and Charitable Endowments,
(Administration) Department,
Nungambakkam High Road,
Chennai-600 034.
 3. The Chairman,
Board of Trustees,
Incorporated and unincorporated Temples,
Suchindrum, Kanyakumari District.
 4. The Deputy Commissioner and Executive Officer,
Kanyakumari District Temples, Head Office,
Suchindrum, Kanyakumari District.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondents to consider the petitioner for promotion to the post of Assistant with effect from 16.06.2005 with all service benefits including notational promotion, fixation of scale of pay, increment, arrears etc., by including library Assistants' post as feeder post with retrospective effect i.e. from the date of G.O.Ms.No.189 dated



28.06.2010 of Tamil Development, Religious Endowments and Information Department.

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For Petitioner : Mr.K.V.Subramanian, Senior Counsel
for Mr.M.A.Abdul Wahab

For Respondents: Mr.S.John J.Raja Singh (for R1 & R2)
Government Advocate
: Mr.H.Elango (for R4)
: No Appearance (for R3)

O R D E R

Heard Mr.K.V.Subramanian, learned Senior Counsel for Mr.M.A.Abdul Wahab, learned counsel for the petitioner and Mr.S.John J.Raja Singh, learned Government Advocate for R1 and R2.

2.The following order was passed by me on 05.10.2021:

'There is no appearance for the petitioner.
On 23.09.2021, I had recorded the request of the petitioner for accommodation and that apart, noted at paragraph 2 as follows:

2.....learned Government Advocate has circulated written instructions dated 23.09.2021, to the effect that this petitioner had filed a writ petition before the Madurai Bench of this Court in W.P.(MD) No.11414 of 2005 that travelled in W.A. (MD). No.562 of 2011, also on the question of fixation of seniority. Let a copy of the order in W.P.(MD) No.11414 of 2005 and W.A. (MD). No.562 of 2011 be placed on record.

.....

2. Today, Mr.S.John J.Raja Singh, learned Government Advocate for R1 and R2 circulates a decision of the Division Bench in W.A.(MD) No.562 of 2011 , wherein the appellant is the petitioner in the present Writ Petition. She had challenged an order passed in W.P.(MD) No.11414 of 2005 dated 22.03.2011, at the instance of one V.N.Sivakumar, wherein, the State and the officials of the Hindu Religious and Charitable Endowments Department (HR & CE) as well as the present petitioners had been



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arrayed as respondents 1 to 4 and R5 respectively in that Writ Petition.

3. The aforesaid Writ Petition had come to be allowed quashing the appointment of A.Arunthathi, appellant therein and petitioner herein, as Assistant in the Suchindram Temple in Kanyakumari District, as against which, she had filed a Writ appeal. The Writ Appeal had been dismissed on 18.06.2013 confirming the order of the learned single Judge quashing the order of the Commissioner, HR & CE Department approving the appointment of Arunthathi as Assistant from the post of Library Assistant. The Commissioner, HR & CE had stated in counter that approval of her appointment had also been under review and had been thereafter cancelled and thus the name of V.N.Sivakumar was to be considered in accordance with the Service Rules in force.

4. The present Writ Petition seeks a mandamus directing the respondents to consider the petitioner for promotion to the post of Assistant with effect from 16.06.2005 with all consequential benefits.

5. With the allowing of W.P.(MD) No.11414 of 2005 on 22.03.2011, the claim of V.N.Sivakumar has been accepted and that of the petitioner rejected. Thus it was wholly inappropriate for the petitioner to have filed the present Writ Petition before this Court seeking a mandamus for her appointment.

6. The request of the petitioner is misplaced and proceeds on the understanding that the directions at paragraph 19 of the order in Writ Appeal address the petitioner herein, for consideration of her claim for promotion to the post of Assistant, on merits and in accordance with law within a period of eight weeks. This is factually incorrect.

7. Paragraphs 17 to 19 of the order in Writ Appeal are extracted below:

'17. in the light of the above, the Writ Court quashing the impugned order dated 17.10.2005 of the third



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respondent/Commissioner, H.R. & C.E. Department, approving the promotion of the appellant as Assistant from the post of Library Assistant made by the 5th respondent/Executive Officer based on the resolution of the Board of Trustees/4th respondent, is required to be upheld.

18. Now that the promotion of the appellant has been quashed by the Writ Court and further, the Commissioner, H.R. & C.E. in his counter has also stated that approval to her said promotion has been reviewed and that has been cancelled, the claim of the first respondent for promotion is required to be considered in accordance with the service rules in force.

19. In the result, this Writ Appeal fails and it is dismissed. The order of the Writ Court, dated 22.3.2011 passed in W.P.(MD) No.11414 of 2005 is upheld. The appointing authority and the approving authority shall consider the claim of the first respondent/writ petitioner for promotion as Assistant on merits and in accordance with the service rules in force, within a period of eight weeks from the date of receipt of a copy this judgment. '

8. Thus and unambiguously, in Writ Appeal, (i) the order of the Writ Court quashing order dated 17.10.2005 passed by the Commissioner, HR & CE has been confirmed. (ii) the approval granted to the promotion of A.Arunthathi was reviewed and thereafter cancelled by the Commissioner, HR & CE, (iii) the appointing and approving authority have been directed to consider the claim of V.N.Sivakumar, who was the Writ Petitioner in W.P. (MD) No.11414 of 2005 for promotion as Assistant on merits and in accordance with applicable Service Rules within a period of eight weeks from the date of receipt of a copy of that order.

9. Thus for the petitioner to have assumed that such a direction was issued in her case is factually incorrect and the mandamus as sought for



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cannot be granted and this Writ Petition is liable to be dismissed.

10. At this juncture, when the Writ Petition was to be dismissed, a representing counsel states that the counsel on record is held up otherwise and is unable to appear.

11. At this request, list on 06.10.2021 as item No.1.'

3.Today Mr.Subramanian would concur with the factual and legal position as captured in the above order specifically, paragraph-8 thereof.

4.He would however submit that the prayer of the petitioner for inclusion of the petitioner's name for promotion may be considered. This cannot be for the reason that admittedly the 2010 amendment does not mention the category to which the petitioner belonged, as being one of the feeder categories for promotion. Issuing a mandamus as sought for, would tantamount to adding to the amendment itself, which is impermissible.

5.This writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

vs/kbs

To

1. The Secretary to Government,
Department of Tamil Development,
Culture and Religious Department,
Fort St.George, Chennai-600 009.



2. The Commissioner,
Hindu Religious and Charitable Endowments,
(Administration) Department,
Nungambakkam High Road,
Chennai-600 034.

3. The Chairman,
Board of Trustees,
Incorporated and unincorporated Temples,
Suchindrum, Kanyakumari District.

4. The Deputy Commissioner and Executive Officer,
Kanyakumari District Temples, Head Office,
Suchindrum, Kanyakumari District.

+1CC to The Government Pleader, SR.No. 52791

+1CC to The Special Government Pleader, SR.No. 53424

W.P. No.22938 of 2014

SV(CO)

B.VC (25/10/2021)