



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

**W.P (MD)No.5240 of 2018
and W.M.P. (MD)Nos.5215 & 5216 of 2018**

K.Neelambiga

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Additional Chief Secretary/
Commissioner,
Commercial Tax, Chennai.

2.The Commercial Tax Commissioner,
Commercial Tax, Chennai.

3.The Joint Commissioner,
(State Commercial Tax),
Madurai Division, Madurai.

4.The Joint Director,
Ex-service Soldier Nala Iyakkagam,
No.22, Raja Muthaiah Salai,
Chennai - 600 003.

5.The District Collector,
Collector Office,
Madurai District,
Madurai.

6.The Special Deputy Collector,
Social Welfare Scheme,
Collector Office Campus,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent proceedings in Na.Ka.A10/1922/2014 dated 30.11.2017, quash the same as illegal and consequently directing the respondents 1 to 3 to give compassionate appointment in the cadre of Record Clerk to the petitioner as forwarded by the 5th respondent's proceedings in Na.Ka.No.PaA6/5516/2010, dated 27.01.2016 within a time frame fixed by this Court.



For Petitioner : Mr.M.Venkatesan
For Respondents : Mr.A.K.Manickam,
Standing Counsel for Govt.

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ORDER

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order dated 30.11.2017, passed by the third respondent and to direct the respondents 1 to 3 to give compassionate appointment in the cadre of Record Clerk to the petitioner.

2. The case of the petitioner is that her husband joined the Indian Army service as Nayak and he died on 05.01.2014, while he was in service. Thereafter, the petitioner has submitted an application to the fourth respondent seeking compassionate appointment. The fourth respondent forwarded the same to the fifth respondent. Thereafter, based on the request of the third respondent, seeking panel for compassionate appointment in the cadre of Record Clerk, the fifth respondent recommended 15 members list for appointment of Record Clerk, in which the petitioner's name is mentioned in Serial No.14. However, the third respondent, vide impugned proceeding dated 30.11.2017, rejected the same on the ground that the persons, recommended by the fifth respondent, have acquired higher educational qualification for appointment of Record Clerk. Challenging the said order, the petitioner has filed the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the third respondent, without considering the letter forwarded by the fifth respondent in his proceedings in Na.Ka.No.PaA6/5516/2010, dated 27.01.2016, has passed the impugned order and therefore, the same is unsustainable and liable to set aside. The learned counsel further submitted that since the petitioner's family is in indigent circumstances after the death of the sole breadwinner, the petitioner's case may be considered for compassionate appointment.

4. The respondents 1 to 3 have filed counter affidavit and based on the counter affidavit, the learned Standing Counsel for Government appearing for the respondents submitted that the petitioner is possessing B.A.(Economics) and she is eligible to apply for higher post only and therefore, her appointment cannot be considered.

5. I have anxiously considered the rival submissions and perused the materials placed on record.



6. On a perusal of the records, it is seen that the petitioner's application has been recommended by the respondents 4 and 5 to the third respondent. The third respondent rejected the said application, on the ground that the petitioner is possessing B.A.(Economics) and the qualification prescribed for the Record Clerk is to pass 10th Standard. This Court has not accepted the said stand taken by the respondents. At present, even for the post of Office Assistant in the Government Department as well as in the High Court services, the candidates, who possessed higher qualification viz., M.Sc., M.Ed., M.Phil, and P.G. Course, have also applied for the said post. Therefore, unless there is any specific bar for appointing the persons, who acquired for higher qualification, to the lower post, the stand taken by the respondents is unsustainable and without justification and hence, the same is liable to be set aside.

7. In view of the above, the impugned order passed by the third respondent dated 30.11.2017 is set aside and the matter is remitted to the third respondent for fresh consideration. The third respondent is directed to consider the case of the petitioner afresh, by taking note of the proceeding of the fifth respondent dated 27.01.2016 and pass appropriate orders, if the petitioner is otherwise eligible, as expeditiously as possible, preferably within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. This Writ Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Additional Chief Secretary/ Commissioner,
State of Tamil Nadu,
Commercial Tax, Chennai.

2.The Commercial Tax Commissioner,
Commercial Tax, Chennai.

3.The Joint Commissioner,
(State Commercial Tax),
Madurai Division, Madurai.

4.The Joint Director,
Ex-service Soldier Nala Iyakkagam,
No.22, Raja Muthaiah Salai,
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5.The District Collector,
Collector Office,
Madurai District,
Madurai.

6.The Special Deputy Collector,
Social Welfare Scheme,
Collector Office Campus,
Madurai.

+1 CC to M/s.M.VENKATESAN, Advocate (SR-26621[F] dated 18/08/2021)

+1 CC to M/s.GP (SR-26776[F] dated 19/08/2021)

**W.P (MD) No.5240 of 2018
17.08.2021**

AC (CO)
TR(25.08.2021) 4P 9C