BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13953 of 2020
and
W.M.P.(MD)No.11617 of 2020

A.Indira ... Petitioner

Vs.

1.The Principal Secretary / Commissioner (Commercial Taxes),
Commercial Tax Building,
Ezhilagam, Chepauk, Chennai.

2.The Joint Commissioner (State Taxes),
Tirunelveli Division,
Commercial Taxes Building,
AR Line Road, Palayamkottai,
Tirunelveli District.

3.The Deputy Commissioner (State Taxes),
Virudhunagar District,
Virudhunagar.

4.The Assistant Commissioner (State Taxes)
Virudhunagar District,
Virudhunagar. ... 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 relating to the impugned order of the second respondent in

A8/2963/2019, dated 03.09.2020 and the consequential impugned order of the third respondent in Se.Mu.Na.Ka.No.A1/4995/2019, dated 04.09.2020 and quash the same and consequently, direct the respondents to grant all service and monetary benefits.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioner joined the Khadi Board as Senior Spinner on 24.09.1986. She became Khadi Assistant Grade on 21.08.1995. Since many posts became surplus in Khadi Board, the petitioner was transferred to Commercial Tax Department and posted as Record Clerk on 10.05.2010. She became a Junior Assistant in the year 2017. The next promotional post is that of Assistant. However, for becoming an Assistant, one should have undergone what is known as Bhavani Sagar Training. The Government issued G.O.Ms.No. 120, Personnel and Administrative Reforms (Trg-1) Department, dated 05.12.2016 granting exemption in favour of those Junior Assistants who have crossed the age of 53 years. The petitioner was eligible to claim benefit under the aforesaid G.O. Taking note of the same, the second respondent herein

passed proceedings dated 09.02.2019 granting exemption to the writ petitioner. Subsequently, probation was also declared. Later, the department took the view that it is not open to the Joint Commissioner of Tirunelveli Division to grant such exemption and that it should be done only at the level of Government or at the level of first respondent. Therefore, the order dated 09.02.2019 was withdrawn. Challenging the same, this writ petition came to be filed. During the pendency of this writ petition, the Government issued G.O.(D).No.106, dated 10.05.2022 granting exemption in favour of as many as 26 Juniors Assistants who had crossed the age of 53 undergoing Bhavani Sagar Training. The petitioner's name figures at serial No.26.

3. Strictly speaking, the grievance of the petitioner no longer survives. However, the petitioner's counsel pointed out that this benefit should be extended to the petitioner with effect from 09.02.2019. No exception can be taken to the said request. This is because the petitioner is claiming benefit under G.O.Ms.No.120, Personnel and Administrative Reforms (Trg-1) Department, dated 05.12.2016. I declare that the petitioner will be entitled to the benefit of G.O.Ms.No.120, Personnel and Administrative Reforms (Trg-1) Department, dated 05.12.2016 with effect from 09.02.2019. If any junior has been promoted in the meanwhile, the petitioner will be placed immediately

above him. The petitioner will be entitled to all the consequential benefits also. Appropriate proceedings will be issued in this regard by the second respondent within a period of 8 weeks from the date of receipt of a copy of this order. If the petitioner's probation has not been already declared, it shall be done so within the aforesaid period. It is needless to add that the petitioner will be entitled to promotion only if there is no other legal impediment.

4. The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

11.11.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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