



WEB COPY

W.P.(MD)Nos.18838 of 2017 and 2600 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)Nos.18838 of 2017 and 2600 of 2019

and

W.M.P. (MD)Nos.15207 of 2017, 12702 of 2018,
1977 and 1978 of 2019 and 16606 of 2020

W.P. (MD)No.18838 of 2017:

S.Marithangam

... Petitioner

vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Ministry of Labour and Employment,
Secretariat, Chennai - 600 009.

2.The Director,
Department of Employment and Training,
Guindy, Chennai - 600 032.

3.The Joint Director (CTS),
Department of Employment and Training,
Guindy, Chennai - 600 032.

4.Rajasekar,
Joint Director (CTS),
Department of Employment and Training,
Guindy, Chennai - 600 032.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the proceedings of the third respondent made in Na.Ka.No.16360/Pa.A2/2017-3, dated 26.09.2017 and to quash the same.

For Petitioner : M/s.M.Maria Vinola

For R1 to R3 : Mr.N.Ramesh Arumugam

Government Advocate (Civil side)

For R4 : No appearance

W.P. (MD)No.2600 of 2019:

S.Marithangam

... Petitioner

vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Ministry of Labour and Employment,
Secretariat, Chennai - 600 009.



2.The Director,
Department of Employment and Training,
Guindy, Chennai - 600 032.

... Respondents

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the second respondent made in Sa.Mu.Order.22145/PaA2/2018, dated 31.01.2019 and to quash the same in so far as Serial No 24 and consequently to direct the respondent to include the name of the petitioner in the impugned panel as fit for promotion.

For Petitioner : M/s.M.Mariavinola

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate (Civil side)

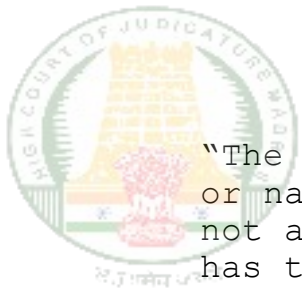
COMMON ORDER

The Writ Petition in W.P.(MD)No.18838 of 2017, is filed for issuance of a Writ of Certiorari, to quash so far as Serial No 24 the impugned proceedings of the third respondent in Na.Ka.No.16360/Pa.A2/2017-3, dated 26.09.2017. The Writ Petition in W.P.(MD)No.2600 of 2019, is filed for issuance of a Certiorarified Mandamus, to quash the impugned proceedings of the second respondent in Sa. Mu. Order. 22145 / PaA2/2018, dated 31.01.2019 and consequently to direct the respondent to include the name of the petitioner in the impugned panel as fit for promotion.

2. The petitioner has preferred the Writ Petition in W.P.(MD) No.18838 of 2017, challenging the charge memo. The charges against the petitioner are that she has not accepted the transfer order and has not reported to duty to the transferred place, namely Manikandam. Therefore, she has deliberately and unauthorizedly absented which amount to insubordination to the transfer order and also it amounts to negligence in discharge of official duty. The Writ Petition is filed challenging the charge memo.

3. The respondents have filed a counter stating as per Annexure-III of the Letter No. 23847 / 98-1 dated 05.08.1998 issued by the Department of Personnel and Administrative Reforms a format was issued to all staff and the same way a format was issued to the petitioner also. The petitioner has given her willingness in the form, but the same could not be considered since so many representations were received for the same place mentioned by the petitioner. The transfers are considered based on the following criteria:

<https://hcservices.ecourts.gov.in/hcservices/>



"The transfers necessitated on account of any emergency or natural calamity when existing manpower in any area is not adequate to handle the situation or surplus man power has to be moved out"

4. Further it is submitted that the Government ITI Karaikudi out of 12 post sanctioned 7 post have been filled up but in Government ITI Manikandam out of 9 posts sanctioned only 3 was filled up. In order to equalize the strength of office staff and to spread of work uniformly for effective functioning of ITI's the said transfer was effected. The said Government ITI Manikandam is a newly started ITI and it requires experienced Assistant to set up the office and since the petitioner is one such experienced person, hence she was transferred. The transfer order was due to administrative reasons only. The petitioner was relieved on 16.06.2017 and she ought to have joined the new station but she applied earned leave from 17.06.2017 after accepting the relieving order. Since the petitioner has not joined the new place till 26.07.2017 the petitioner was charged with insubordination through the impugned charge memo dated 26.09.2017. The petitioner cannot challenge the charge memo and this Court has held in several cases that the charge memo cannot be challenged. It is also stated in the counter filed in W.P. (MD) No. 2600 / 2019 that the petitioner joined as Junior Assistant on 12.11.1999 at Government Industrial Training Institute, Karaikudi, then promoted as Assistant and posted in the same station on 19.11.2013 and continued to work in the station till 16.06.2017. The petitioner was never transferred to any station and she was working in the same station for 19 years.

5. This Court has held in several cases that charge memo cannot be challenged. This charge memo is issued as early as 26.09.2017. Until now, the petitioner has not even submitted any explanation to the charge memo. Therefore, this Court deems it fit to direct the petitioner to submit her explanation within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondents are directed to complete the enquiry within a period of four weeks thereafter. The respondents are directed to complete the enquiry at the earliest, since the petitioner is also seeking promotion to the next level. To this effect, the petitioner has also filed Writ Petition, W.P.(MD)No.2600 of 2019, to include her name in the panel. In fact, the Writ Petition, W.P.(MD)No.2600 of 2019, is filed challenging the panel, dated 31.01.2019. Because of the pendency of the charge memo, the respondents have not included the petitioner's name in the panel. Therefore, after the completion of the enquiry and passing of the order in the charge memo, if the petitioner is eligible to be included in the panel, then, the respondents are directed to include the petitioner's name in the panel and consider her name for the next promotion level.



6. With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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 Secretary to the Government,
Ministry of Labour and Employment,
Secretariat, Chennai - 600 009.

2. The Director,
Department of Employment and Training,
Guindy, Chennai - 600 032.

3. The Joint Director (CTS),
Department of Employment and Training,
Guindy, Chennai - 600 032.

+1 CC to M/s.SPL.GP (SR-2049[F] & SR-2050[F] dated 21/01/2022)

+1 CC to M/s.M.MARIAVINOLA, Advocate (SR-2104[F] dated 21/01/2022)

W.P. (MD)Nos.18838 of 2017
and 2600 of 2019
20.01.2022

MGJ(17.02.2022) 4P 6C