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W.P. No. 7378 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 7378 of 2023

P.Jayalalitha

... Petitioner

-VS-

1. The District Collector,
District Collector Office,
Salem – 636001.

2. The District Employment Officer,
O/o. District Employment Office,
Vadakku Maravaneri,
Salem District.

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, to direct the First Respondent to consider the Petitioner's representation dated 30.01.2023 and consequently instruct the Second Respondent to sponsor the Petitioner's name to any one of the department in the Government for Employment Assistant.

For Petitioner : Ms. S.Vinodha

For Respondents : Mr. K.Karthick Jeganath,
Government Advocate



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ORDER

Heard Ms. S.Vinodha, Learned Counsel for the Petitioner and Mr. K.Karthick Jeganath, Learned Government Advocate, who takes notice for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner holds a 'destitute widow certificate' issued on 13.09.2022 by the Revenue Divisional Officer, Athur Division, Salem. After registering her name in the District Employment and Career Guidance Centre, Salem on 15.09.2022, she had sent representation dated 30.01.20223 to the First Respondent to grant her suitable appointment in Government service. It is the case of the Petitioner that her husband, viz., Poongan, committed suicide on 08.06.2020 as he was harassed by his creditors and due to such untimely demise, his poverty stricken family is unable to make both ends meet for their daily living without any source of income or property. Contending that the said representation made by her did not evoke any response, the Petitioner has filed this Writ Petition for directing the First Respondent to pass orders in that regard.



3. It is beyond cavil that any appointment in public service has to be made in consonance with the mandate of Articles 14 and 16 of the Constitution of India, 1950, which guarantees equality of opportunity in public employment for all eligible citizens. Further, the selection to the posts in Government service would have to be made by following the prescribed procedure which involves assessing the *inter se* merit of the competing applicants with reference to their suitability to hold such post on receipt of applications after wide publicity and shortlisting of persons satisfying the eligibility conditions. In other words, there is no scope for requiring any authority in the Government to directly appoint a particular person merely because he may have the eligibility stipulated for being appointed to that post.

4. The discretionary powers of this Court under Article 226 of the Constitution cannot be invoked to grant relief in the nature as now sought by the Petitioner in this case. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], where it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has



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a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singh v. State of U.P. [AIR 1962 SC 1183]). The duty that may be



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*enjoined by mandamus may be one imposed by the
Constitution, a statute, common law or by rules or orders
having the force of law...."*

Viewed from that perspective, it is not possible to entertain this Writ Petition.

5. Though obvious, it is clarified that nothing said in this order shall be considered as precluding the Petitioner, if she is otherwise eligible and not disqualified, to participate in any recruitment process conducted for filling up of vacancies in any post in Government service.

In fine, the Writ Petition is dismissed with the aforesaid clarifications. No costs.

09.03.2023

kv

Index: Yes/No

Note: Issue order copy by 31.07.2023.



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P.D. AUDIKESAVALU, J.

kv

To

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