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W.P.No.32528 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.32528 of 2014

A.Sumathi

W/o Late Ananthanarayanan

.... Petitioner

VS

The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

.... Respondent

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Mandamus to direct the respondent to pass an order of appointment of the petitioner relate back to the date on which other persons were appointed on compassionate grounds in 2005 and consequently fix the petitioner's pay in the relevant Pay scale prevailing in 2005 and give the benefit of fixation of pay in the revised scales made applicable to the services of the Chennai Port Trust from time to time to the petitioner as the petitioner is also similarly situated person as in SLP No.34085/2013 dated 30.10.2013.

For Petitioner : Mr.K.Raja

For Respondents : Mr.S.Haja Mohideen Gisthi



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ORDER

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This writ petition has been filed to direct the respondent to pass an order of appointment of the petitioner relate back to the date on which other persons were appointed on compassionate grounds in 2005 and consequently, fix the petitioner's pay in the relevant Pay Scale prevailing in 2005 and give the benefit of fixation of pay in the revised scales made applicable to the services of the Chennai Port Trust from time to time to the petitioner as the petitioner is also similarly situated person as in SLP No.34085/2013 dated 30.10.2013.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the Chennai Port Trust.

3. Learned counsel for the petitioner would submit that the petitioner's husband Late Ananthanarayanan worked as Assistant Technician in E & M Department, Chennai Port Trust and his Card Number was 6504. He died in harness on 05.01.2001 leaving behind his wife/petitioner herein and his son, A.Prasad. The petitioner filed a writ petition in W.P.No.18331/2008 seeking compassionate appointment before this Court. In the said writ petition, the petitioner has sought for appointment to the post of Junior Assistant or Draughtsman (Civil). This Court allowed the



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writ petition, directing the respondent to offer compassionate appointment to the petitioner either in Class III or in Class IV service as per the seniority of the petitioner for compassionate appointment on the rolls of the respondent. Against the said order, the respondent Port Trust filed Writ Appeal in W.A.No.2453/2011 before the Division Bench of this Court and the same was dismissed on 14.02.2012. Challenging the same, the respondent preferred Special Leave Petition in SLP(Civil) No.29004/2012 before the Hon'ble Apex Court and the same was also dismissed on 31.03.2014. In the meantime, similarly placed person like that of the petitioner one Tmt.S.Jayachitra, raising the same ground filed W.P.No.7522/2011 and the same was allowed on 16.11.2012, against which, writ appeal was filed in W.A.No.1941/2013 and the same was dismissed on 25.09.2013. Challenging the same SLP.No.34085/2013 was filed and the same was also dismissed with cost of Rs.1,00,000/- vide order dated 30.10.2013 with the following direction:

"The petitioners are directed to implement the order of the learned single judge, as affirmed by the Division Bench of the High Court within one month from today. The appointment of the respondent shall relate back to the date on which other persons were appointed on compassionate grounds in 2005 and



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she shall be given the benefit of actual fixation of pay in the revised scales made applicable to the services of the Chennai Port Trust from time to time.

The petitioners shall pay the cost of Rs.1,00,000/- to the respondent for filing frivolous litigation.

A report showing compliance of the direction given by the High Court and this Court shall be filed in the Registry of the Madras High Court within Six Weeks. Thereafter, the matter be listed before the Bench which decided the appeal filed by the petitioners. If it is found that the petitioners have failed to comply with the directions given by the High Court and this Court, then the concerned Bench shall be free to initiate proceedings against the defaulting officers under the Contempt of Courts Act 1971."

4. Learned counsel would further submit that the petitioner was given appointment on compassionate ground as Peon on 25.06.2013 and she is working as such till date. Since the petitioner was also similarly placed person, she sought for the benefit of the order granted in SLP.No. 34085/2013 dated 30.10.2013 by way of representation to the respondent on 20.05.2014 and the same is pending till date. Learned counsel would further submit that unless a direction is given to the respondent to treat the petitioner's appointment relate back to the date on which other persons were



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appointed on compassionate ground in 2005 and her pay is fixed in the relevant scale prevalent in 2005 and given the benefit of actual fixation of pay in the revised scale made applicable to the services of the Chennai Port Trust from time to time, it would amount to discrimination and violative of Articles 14 and 16 of the Constitution of India.

5. Per contra, learned Standing Counsel appearing for the Chennai Port Trust would submit that the contention of the petitioner that she has to be considered on par with Smt.S.Jayachithra who was also appointed on compassionate appointment is not correct. The petitioner has filed W.P.No.18331/2008, in which, an order was passed directing the respondent to offer compassionate appointment to the petitioner either in Class III or in Class IV service as per the seniority to the petitioner for compassionate appointment on the rolls of the respondent. The writ appeal filed by the Port Trust was dismissed. Against which, Special Leave Petition in SLP.(C).No.29004 of 2012 was filed by the Port Trust. When the same was pending, the petitioner filed Contempt Petition No.1218 of 2012 for non-compliance of the order passed in the writ petition and the said Contempt Petition was closed on 19.06.2013 recording the statement of the respondent Port Trust that the order passed by the single Judge is under



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compliance and the consequential order would be issued within a week. Accordingly, the petitioner was provisionally appointed as Peon on 25.06.2013 in the Finance Department and the said appointment was given with effect from 25.06.2013 without prejudice to the SLP filed by the Port Trust. Subsequently, the said SLP filed by the Port Trust was dismissed on 31.03.2014 observing that "In the peculiar facts and circumstances of the case we see no reason to interfere in this matter in exercise of our powers under Article 136 of the Constitution of India." The said SLP was dismissed only after the order passed in SLP(C).No.34085 of 2013 in respect of the said Jayachitra. Hence, the contention of the petitioner that she has to be considered on par with Smt.S.Jayachitra is not correct.

6. This Court, considered the submissions made on either side and perused the materials available on record.

7. The only claim of the petitioner is to fix her pay in the relevant Pay scale prevalent in 2005 and give the benefit of fixation of pay in the revised scales made applicable to the services of the Chennai Port Trust from time to time, as given to similarly situated person viz.,Smt.S.Jayachitra as per the order passed in SLP No.34085/2013 dated 30.10.2013.



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8. The petitioner's husband died on 05.01.2001 and she made application for compassionate appointment in the year 2001. Smt.Jayachitra's husband died on 03.11.2000 and she also made application for compassionate appointment on 15.11.2000. The writ petition seeking compassionate appointment was filed by the petitioner in the year 2008 in W.P.No.18331/2008 and the same was ordered on 10.08.2009, directing the respondent to offer compassionate appointment to the petitioner either in Class III or in Class IV service as per the seniority of the petitioner for compassionate appointment on the rolls of the respondent. Against which, writ appeal was filed by the Port Trust in the year 2011 in W.A.No.2453/2011 and the same was dismissed on 14.02.2012. In the case of Smt.Jayachitra, the writ petition seeking compassionate appointment was filed in the year 2011 in W.P.No.7522/2011 and the same was ordered on 16.10.2012. Against which, writ appeal was filed by the Port Trust in the year 2013 in W.A.No.1941/2013 and the same was dismissed on 25.09.2013.

9. It is pertinent to note that the petitioner has filed the writ petition prior to the writ petition filed by Smt.Jayachitra. The petitioner's writ petition was order in the year 2009 directing the respondents to offer



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compassionate appointment and Smt.Jayachitra's writ petition was ordered in the year 2012 directing the respondents to offer compassionate appointment. The Port Trust filed writ appeal in both the writ petitions and both the writ appeals are dismissed. The Special Leave Petition in SLP.No.29004/2012 was filed before the Hon'ble Apex Court against the order of dismissal passed in writ appeal in respect of the petitioner in 2012 and the same was dismissed on 31.02.2014. The S.L.P filed in respect of Smt.Jayachitra was dismissed on 30.10.2013.

10. It is also brought to the notice of this Court that though the SLP filed in respect of the petitioner was prior to the SLP filed in respect of Smt.Jayachitra, the SLP in respect of Smt.Jayachitra, was dismissed earlier i.e., 30.10.2013 with a direction that the appointment of Jayachitra shall relate back to the date on which other persons were appointed on compassionate grounds in 2005 and she shall be given the benefit of actual fixation of pay in the revised scales made applicable to the services of the Chennai Port Trust from time to time. In the present case, the petitioner was given appointment on 25.06.2013 while the SLP was pending. Though no direction was given while dismissing the SLP in respect of the petitioner, which was passed subsequent to the order passed in SLP in respect of



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Jayachitra, as the petitioner herein and Smt.Jayachitra are similarly placed, the same yardstick has to be applied in the case of the petitioner also. Therefore, this Court is of the opinion that the case of the petitioner should also be treated equally as that of Tmt.Jayachitra. Accordingly, the petitioner is also entitled for the benefits granted to similarly placed Tmt.Jayachitra as per the order passed in SLP No.34085/2013 dated 30.10.2013.

11. In the result, the Writ Petition is allowed. No costs.

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Index:Yes/No
Speaking/Non-speaking order
vsi

To

The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.



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J.NISHA BANU,J.

vsi

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