



W.P.No.27808 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.27808 of 2019

K.Vijayakumari

... Petitioner

Vs.

1. State of Tamilnadu
rep. By its Secretary to Government,
Tourism and Culture Department,
Secretariat,
Chennai – 600 009

2. The Principal Commissioner and
Commissioner of Museums,
Government Museum, Egmore,
Chennai – 600 008

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order made in Na.Ka.No.3922/2018/E2 dated 12.07.2019 passed by the 2nd respondent and quash the same and consequently direct the respondents to grant the petitioner notional promotion as Junior Assistant with effect from 05.12.2002, on which date the petitioner's junior was promoted as Junior Assistant and also to grant the petitioner all monetary and pensionary benefits consequent upon such Notional Promotion.



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For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.T.M.Rajangam
Government Advocate

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order made in Na.Ka.No.3922/2018/E2 dated 12.07.2019 passed by the 2nd respondent and quash the same and consequently direct the respondents to grant the petitioner notional promotion as Junior Assistant with effect from 05.12.2002, on which date the petitioner's junior was promoted as Junior Assistant and also to grant the petitioner all monetary and pensionary benefits consequent upon such Notional Promotion.

2. According to the petitioner, she was appointed as Gallery Guard at Government Museum, Salem on 28.09.1987 and she was transfered and posted as Ticket Sales Attender at Government Museum, Chennai on 04.12.2002. Further, the petitioner's junior, namely, B.Shankar was promoted as Junior Assistant and posted at Government Museum, Chennai on 05.12.2002. The petitioner challenged the said promotion of B.Shankar in O.A.No.6540 of 2002 before the Tamil Nadu Administrative Tribunal, Chennai and the same was transfered to this Court and



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renumbered as W.P.No.31997 of 2005 and disposed of on 21.04.2006 directing the respondents to comply with the directions issued in the Govt. Letter dated 09.09.2005. The said Shankar preferred a Writ Appeal in W.A.No.715 of 2006, however, did not pursue it and the said Shankar challenged the Govt., Letter dated 09.09.2005 in W.P.No.13361 of 2006 contending that principles of natural justice has not been afforded. Further, the said W.P.No.13361 of 2006 was disposed of on 10.01.2007 directing the respondent therein to provide opportunity and pass necessary orders. By an order dated 28.02.2007, the 1st respondent upheld the order dated 09.09.2005 and canceled the appointment of Shankar as Junior assistant after providing opportunity to the parties.

(ii) The said Shankar was removed from the post of Junior assistant and was reverted to the earlier post by proceedings dated 05.03.2007. Challenging the same, the said Shankar preferred W.P.No.8758 of 2007. When the said petition was pending, the petitioner was superannuated on 30.06.2017. The petitioner made representation to the respondents requesting them to grant notional promotion and monetary and pensionary benefits to her as she was entitled to promotion on the day when her junior was promoted as per seniority list. The said Shankar was again promoted as a special case as junior assistant by the 2nd respondent on the ground that he was in Sl.No.1 in the seniority panel of gallery assistants and he



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was retired on 30.04.2019 making him eligible for pensionary benefits as junior asistant. An order was passed by the 2nd respondent rejecting the petitioner's representtaion dated 27.10.2018, hence the present Writ Petition.

3. The learned counsel for the petitioner would submit that it is clear that the said Shankar, who was junior to the petitioner not only illegally promoted but also retired as junior assistant on 30.04.2019 making him eligible for pensionary benefits as junior assistant. Further, the representation of the petitioner was rejected by the 2nd respondent in Na.Ka.No.3922/2018/E2 dated 12.07.2019, thereby the petitioner seeks to quash the same and consequently direct the respondents to grant the petitioner notional promotion as Junior Assistant with effect from 05.12.2002, on which date the petitioner's junior was promoted as junior assistant and to grant the petitioner all monetary and pensionary benefits consequently.

4. Per contra, the learned Government Advocate appearing for the respondents has filed a detailed counter and submits that the feeder category for the post of Junior Assistant is not ticket sales attender / records attender. The post of ticket sales attender comes under Tamilnadu Subordinate Service, whereas, the post of junior assistant comes under Tamilnadu Ministerial service and is under the purview of Tamil Nadu



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Public Service Commission. The said post is not a promotional post but entry level post. Further, the said Sankar was promoted as junior assistant on 26.04.2019, as he had served as junior assistant for a period of 16 years without any monetary benefit and the minimum pay in the post of junior assistant was also adjusted while claiming his increment arrears in the post of gallery guard.

5. The learned Government Advocate appearing for the respondents further submits that the petitioner retired on superannuation on 30.06.2017 and requesting for notional promotion with monetary benefits w.e.f. 05.12.2002, is not reasonable. As a general rule, no pay can be given for the period of no work in a post and the petitioner has not even worked even for one day in the post of junior assistant and her request, is not tenable. Further, one B.Sankar was reverted to the post of Gallery Guard with retrospective effect 05.12.2002 and the minimum pay without any increment in the post of junior assistant was also recovered from him in the pay arrear bill, claiming arrears of pay in the post of gallery guard, thereby seeks to dismiss the petition.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and perused the documents placed on record carefully.



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7. At this juncture, it is pertinent to point out that the learned counsel for the petitioner in support of his contention has relied upon the order of this Court dated 24.07.2018 in W.P.8758 of 2007 filed by the said Shankar, particularly at Paragraph no.7, wherein this Court had dismissed the said petition and the same is hereby extracted as follows:

“7. For appointment to the post of Junior Assistant by transfer of service, all the eligible persons as per seniority have to be considered. When the 3rd respondent is senior to the petitioner and she is eligible to be appointed to the post of junior assistant, as per G.O.(Ms)No.43 dated 15.02.1994, the claim made by the petitioner is unsustainable. This Court is fully satisfied that the impugned orders are perfectly valid and the petitioner's promotion to the post of Junior Assistant, which is contrary to the aforesaid G.O., has been rightly cancelled. The Writ Petition fails and the same is dismissed.”

8. As per the said order, it is clear the petitioner, who was 3rd respondent in the W.P.No.8758 of 2007 is entitled to be appointed to the post of junior assistant as per G.O.(Ms) No.43 dated 15.02.1994 and the same has to be considered by the 1st respondent, however, the said authority, cannot simply brush aside the said observation made by this Court and it is seen in the impugned order dated 12.07.2019 that the authorities have simply stated that the Court has not given any direction to the authorities for providing her salary and benefits to the post of Junior Assistant and hence she is not entitled to be considered, which is unsustainable. When this Court has directed that the petitioner is eligible



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for the same and when the post is also available and that one Shankar was also demoted, this petitioner ought to have been considered.

9. Considering the above said facts and circumstances of the present case and the fact that at present the petitioner was retired on 30.06.2017 and she has not even worked for a day in the post of junior assistant, 'No work no pay' will apply, hence this Court is of the opinion that the petitioner cannot be given notional promotion, however, taking note of the fact that the petitioner's junior, viz., B.Shankar, who was promoted on 05.12.2002 was demoted, the petitioner, being senior to him, ought to have been promoted on 05.12.2002 as junior assistant, therefore, the authorities shall consider 50% of petitioner's service as 'junior assistant' from 05.12.2002 till her retirement, viz., 30.06.2017 only for pensional benefits and appropriate orders shall be passed by the respondents within a period of 12 weeks from the date of receipt of copy of a order.

With the above observations, the Writ Petition is disposed of. No costs.

03.11.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd



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To

1. State of Tamilnadu
rep. By its Secretary to Government,
Tourism and Culture Department,
Secretariat,
Chennai – 600 009
2. The Principal Commissioner and
Commissioner of Museums,
Government Museum, Egmore,
Chennai – 600 008



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V.BHAVANI SUBBAROYAN J.

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