



W.P(MD) No.1941 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No. 1941 of 2016

and

W.M.P.(MD)Nos.,1689, 1690, 9935 of 2016 and 1448 of 2017

K.Anandhi

: Petitioner

..Vs..

1.The Government of Tamil Nadu,
represented by its Secretary to Government,
Higher Education Department,
Fort St. George, Chennai-600 009.

2.The Director,
Directorate of Collegiate Education,
DPI Compound, Chennai-600 006.

3.The Principal,
Periyar E.V.R. College (Autonomous),
Trichy-23.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue an order or direction more particularly in the nature of WRIT OF CERTIORARIFIED MANDAMUS, to call for the records relating to the impugned order passed by the second respondent in proceedings



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No.O.Mu.No.54098/B1/2013, dated 05.03.2014 and to quash the same as illegal and to direct the respondents to grant age relaxation to the petitioner and to appoint the petitioner to the post of Library Assistant in the third respondent College.

For Petitioner : Mr.S.R.Govindaraj
For Respondents : Mr.V.Omprakash
Government Advocate

ORDER

The present Writ Petition is filed for writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent in proceedings No.O.Mu.No.54098/B1/2013, dated 05.03.2014 and to direct the respondents to grant age relaxation to the petitioner and to appoint the petitioner to the post of Library Assistant in the third respondent College.

2. The brief facts of the case are that the petitioner was appointed as Reading Room Assistant in the third respondent college by the Library Committee of 08.07.2008. The contention of the petitioner is that one post of Library Assistant became vacant in the year 2011 as one



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Mr. Thiagarajan, who was working as Library Assistant, retired on attaining superannuation. The petitioner submitted a representation to fill up the said post by granting transfer to the said post. Whenever the respondents took steps to fill up the post of Library Assistant, the petitioner made representation to post her as Library Assistant in the said vacancy. The said post ought to be filled up as per the rules by taking the list from the employment exchange. The respondents are taking steps to fill up the said post by calling for list from the employment exchange. Hence, the petitioned submitted before this Court that the respondents ought to have granted age relaxation and allow her to join in the regular post as Library Assistant. The respondents have not considered the petitioner's case. Therefore, the petitioner has filed W.P.No.28240 of 2013 and the same was disposed on 11.10.2013 directing the respondents to consider and pass orders. However, the respondents rejected the claim of the petitioner through the impugned order, dated 05.03.2014. The respondents have rejected the same based on G.O.Ms.No.322, Higher Education (G2) Department, dated 05.08.2008, wherein in the said G.O., it has been stated that the persons who are being appointed in the said post



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should have not completed 30 years of age. Since the petitioner is beyond 30 years of age, the respondents have rejected the claim of the petitioner. The further contention of the petitioner is that she was appointed in consolidated pay and in the employment register, the petitioner's name is not in the live register, hence, the respondents have rejected stating this reason as well as. Aggrieved over the same, the present writ petition is filed.

3. The 2nd respondent has filed a counter affidavit reiterating the same averments stated in the impugned order that the petitioner is over aged, the petitioner is receiving consolidated pay in the Reading Room Assistant post. Moreover, the petitioner's name is not in the employment exchange. As per rules the appointment to the said post ought to be by calling list from the employment exchange and when the petitioner's name is not in the list then the petitioner candidature cannot be considered.

4. Mr. S.R. Govindaraj, learned Counsel appearing for the petitioner and Mr. V. Omprakash, learned Government Advocate appearing for the respondents and perused the records.



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5.The 1st contention of the respondents is that the petitioner's name is not in the live register of employment exchange. The petitioner was appointed in consolidated pay as Reading Room Assistant and based on this appointment and since the petitioner is continuing in the service as Reading Room Assistant, her name was removed from the live register and kept in the dead register. Hence this Court is of the considered opinion that this reason of the respondents cannot be accepted, since the petitioner's merit and eligibility cannot be questioned because her name is not in the employment exchange. The respondents ought to have called for the list of names from the employment exchange as well as called for applications from the general public through paper publication or through advertisement and then ought to select meritorious candidate and appoint. Recruiting candidates only through employment exchange is against the ratio laid down by the Hon'ble Supreme Court in Union of India and others vs N. Hargopal and others, reported in 1987 [3] SCC 308 and Excise Superintendent Malkapatanam Vs K.B.N. Vishveswar Rao and others reported in 1996 (6) SCC 216. Even if the rule prescribes recruitment through employment exchange, the same cannot be followed since the



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respondents ought to formulate the recruitment rules in consonance with Article 14 of the Constitution of India. Therefore, the reasons stated by the respondents cannot be sustained.

6. The next contention of the respondents is that the petitioner is already employed in consolidated pay, therefore, the petitioner cannot be considered for appointment in regular basis. But in G.O.Ms.No.322, Higher Education (G2) Department, dated 05.08.2008, it is seen under Rule 3 Sub Clause 2, any person can be appointed in the post by transfer from any class or category or by recruitment by transfer from any other service. But the contention of the respondent is that the petitioner is serving only on consolidated pay and hence the petitioner cannot be considered as regular permanent employee to be transferred and posted in the said post. The contention of the respondents cannot be accepted, the petitioner ought to be granted a chance to get regular employment when the vacancies arise. If other parameters and qualification is available then the petitioner is entitled to be considered.

7. The next contention of the respondents is that the petitioner



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is over aged. As per the said G.O., any person can be recruited if they are below 30 years of age. The learned Counsel appearing for the petitioner rightly pointed out that 30 years was prescribed only for the direct recruitment. As far as the transfer from any other service is concerned, there is no fixed age and the age relaxation ought to be granted.

8. After considering the rival submissions this Court is of the considered opinion that even though the petitioner's claim is legally sustainable, the petitioner cannot be transferred from Reading Room Assistant, since the petitioner is holding only a temporary post. But there is no bar to consider the petitioner for absorption in the said vacant post, because the petitioner is in the said service for more than 15 years. Therefore, the 3rd respondent is directed to submit a proposal to the 1st respondent for regularizing the petitioner in the said vacant post. The 2nd respondent shall in turn submit the papers before the 1st respondent for regularizing the service of the petitioner. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. In the resultant vacancy the respondents shall recruit candidates from the open market as per law.



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9. With the above said observations and directions, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index: Yes/No
Internet: Yes/No
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To

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S. SRIMATHY, J.,

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