



W.P.(MD)No.29317 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.29317 of 2022

and

W.M.P.(MD)No.23333 of 2022

S.Vanitha

: Petitioner

Vs.

1.The Transport Commissioner

Transport and Road Safety Commission,
Ezhilagam,
Cheapauk,
Chennai.

2.The Joint Transport Commissioner

Commissionerate of Transport and Road Safety,
Cheapauk,
Chennai - 5.

3.The Deputy Commissioner of Transport,

Tirunelveli Region,
Perumal Puram.

: Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in his proceedings in Na.Ka.No. 12352/RA2/2022 dated 27.04.2022 and quash the same and consequently direct the respondents to give promotion to the post of Superintendent under the physically challenged persons quota for the panel 2016-2017 to 2019-2020 when with her junior promotion effected on wards and pay all other service and monitory benefits, by following under Section-34 of the Right of Persons with Disabilities' Act, 2016.

For Petitioner : Mr.D.Selvanayagam

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

This writ petition has been filed to quash the proceedings of the first respondent in Na.Ka.No.12352/RA2/2022, dated 27.04.2022 and consequently ro direct the respondents to give promotion to the post of



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Superintendent under the physically challenged persons quota for the panel 2016-2017 to 2019-2020 when her junior promotion effected onwards and pay all the other service and monitory benefits, by following under Section-34 of the Right of Persons with Disabilities' Act, 2016.

2. The learned counsel appearing for the petitioner submitted that the petitioner belongs to Schedule Caste Community and she was selected for appointment to the post of Assistant under Physically Challenged by direct recruitment of TNPSC and joined service in the year 2012 and his probation was declared in the year 2015. There are two groups of Assistant in Transport Department (1) Directly recruited Assistants and another (2) Promotes from the post of Junior Assistants, Typist and Steno-Typist. The Tamil Nadu Ministerial Service Rules 30(b) and 38(b)(ii) speak about the promotional aspects of the Assistants to the post of Superintendent and as per Rule 30(b) r/w. Annexure IV notified under the Rule is general in nature, while Rule 38(b) (ii) r/w IXE drawn under that Rule or specific of special in nature, as it deals exclusively with the appointment, training and conditions of service of directly recruited Assistants in the Transport



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Department Rule, Annexure IV drawn under Rule 30(b) which is general in nature speaks about the rest to be passed or training to be undergone before promotion to the post of Superintendent, for all the departments including Transport Department.

3. Further case of the petitioner is that even the person who is not undergoing training, cannot be denied the promotion to post of Superintendent and each and every year 20 to 25 candidates were sent for training, however, they sent only 5 candidates for training each and every District. Hence, the petitioner filed a writ petition before this Court in W.P.(MD) No.14396 of 2020 for a mandamus to direct the respondents to draw the year wise panel from the year 2016-2017 to 2019-2020 for promotion to the post of Superintendent in Transport Department on the basis of the conditions prescribed under the Tamil Nadu Ministerial Service Rules under Rule 30(b) r/w. Annexure IV and under Rule 38(b) (ii) annexure IX E without insisting for the service requirement for a particular period in a particular post or office and the said writ petition is pending. Whiles, on 15.06.2020 panel for promotion called for including his junior



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batch 2012 and later the individual promotions were issued on 25.09.2020 and the petitioner is a physically challenged person and no separate promotions were allotted to the physically challenged persons. Hence the petitioner made a representation to the respondents on 21.03.2022 to allocate posting for physically challenged persons in the promotional post. However, the said representation was rejected vide order, dated 27.04.2022 on the ground that there is no provision available for allocating the post for physically challenged person in the promotional post. Challenging the same, the present writ petition is filed.

4. The learned counsel for the petitioner further submitted that though the Hon'ble Apex Court repeatedly issued directions to the respondent to provide promotional avenue to the physically challenged persons, however, till date, the said order was not implemented and the respondents have rejected the petitioner's representation only on the ground that there is no provision available for providing reservation in promotion for physically challenged person. However, even in the absence of any provision, the respondents ought to have implement the order of the Apex



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Court and without implementing the order, rejecting the petitioner's representation is not sustainable one. Accordingly, he prayed for allowing the writ petition.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. The facts in the present case are not in dispute. Admittedly the petitioner is selected for the post of Assistant by direct recruitment and he joined service in the year 2012 and completed her probation in the year 2016. The grievance of the petitioner is that she is a physically challenged person and she is entitled for promotion in the physically challenged category. However, the same was not considered. Hence the present writ petition is filed.

7. Further, the grievance of the petitioner is that the order of the Apex Court was not implemented for providing reservation for promotion in the higher post, however, the fact remains that the promotion to the post of



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higher category as follows :

"Tamil Nadu Government (Conditions

of Service) Act, 2016, Rule 40 Section(1) - The

Seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the rule of reservation and the order of rotation in Schedule-V, where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority."

8. As per the above said provision, it is clear that the seniority of a person in a service, class category class, category or grade shall, unless he has been reduced to a lower rank as punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing



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authority, as the case may be, in accordance with the rule of reservation and the order of rotation in Schedule - V and the date of commencement of his probation shall be the date on which joins duty irrespective of his seniority.

9. Admittedly, in the above said provision makes it clear that there is no provision available for reservation for physically challenged person in the promotional post and the person who is in service in the feeder category, the seniority will be drawn to the promotional post and based on the estimate vacancy, the seniority list will be prepared and based on the seniority list, the promotional post will be filled up.

10. However, the petitioner's grievance is that without preparing any seniority list, they are entitled for promotion by way of reservation in physically challenged category. In the absence of any provision for providing promotion under the physically challenged persons, the rejection order cannot be interfered with. Hence, the prayer sought for in this writ petition cannot be granted.



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11. Accordingly, this writ petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No

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M.DHANDAPANI,J.

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