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W.P.No.1130 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.1130 of 2022
and
W.M.P.No.1188 of 2022

N.Jamuna Rani

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its, Additional Chief Secretary
to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat,
Chennai – 600 009.

2. The Commissioner of Art and Culture,
Halls Road,
Egmore,
Chennai – 600 008.

3. The Principal,
Tamil Nadu Government Music College,
Dr.D.G.S.Dinakaran Salai,
Chennai – 28.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandaums to call for the records connected in Lr.(1D).No.105, dated 24.09.2020 of the first respondent and



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quash the same and direct the respondents to promote the petitioner as Secretary of Folk Artists Welfare Board/upgrade the petitioner as Deputy Director Level on par with her junior with all benefits.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader

ORDER

The writ petition has been filed for a Certiorarified Mandamus to call for the records to the Impugned Order dated 24.09.2020 on the file of the first respondent and quash the same and consequently to promote the petitioner as Secretary of Folk Artists Welfare Board or upgrade the petitioner as Deputy Director on par with the juniors with all benefits.

2. Mr.G.Elanchezhiyan, learned counsel appearing on behalf of the petitioner would submit that merely because the petitioner was a senior most Superintendent working at that time, without calling for any option the petitioner was promoted in the available vacancy in the post of Bursar. However, her juniors were promoted to the post of Assistant Director. If the petitioner was promoted as Assistant Director, she would also have been further promoted as Deputy Director. For no fault of the petitioner, the petitioner has lost promotion to the post of Deputy Director.



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3. As per the recruitment rules for appointment to the post of Deputy Director, there are three modes of recruitment to the post of Deputy Director namely (i) Promotion from the post of Assistant Director in the Department of Art and Culture (ii) Transfer from the post of Deputy Directors of other Department (iii) Transfer from any other cadre.

4. In view of the anomalous situation, the respondent at least ought to have considered the petitioner under the third category and transferred her as Deputy Director. The petitioner was denied of her lawful benefits. She retired on voluntary retirement in the same cadre of Bursar. The petitioner is losing huge amounts by way of terminal benefits as well as pension and hence the writ petition.

5. The writ petition is resisted by Mr.Stalin Abimanyu, learned Additional Government Pleader appearing on behalf of the respondents by placing reliance on the counter affidavit. He would submit that the petitioner is seeking promotion to the post of Deputy Director and the petitioner was not in a rank/position to the subordinate rank/position to the post of Deputy Director.



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6. In respect of the second and third categories, the petitioner has to be working as a Deputy Director or any other cadre carrying the same pay scale and not the lower cadre of Bursar.

7. As far as the petitioner's claim regarding the seniority is concerned, she accepted the post of Bursar in the year 2007 and never questioned when her juniors were posted to the post of Assistant Director. Having accepted the post of Bursar and worked all along and retired on voluntary retirement, the petitioner cannot belatedly make the claim.

8. I have considered the arguments of the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents. I have also perused the materials available on records.

9. The prayer in the writ petition is to quash the Impugned Order dated 24.09.2020 and consequently grant her promotion in the cadre of Deputy Director.



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WEB COPY 10. The Rules relating to the recruitment to the post of Deputy Director

is extracted hereunder:-

“3. Method of Appointment:- Appointment to the post shall be made as follows:-

- i. by promotion from among the holders of the post of Assistant Director in the Department of Art and Culture; or*
- ii. by recruitment by transfer among the holders of the post of Deputy Directors of other department; or*
- iii. by recruitment by transfer from any other class or category.”*

11. It can be seen that the petitioner's post as such i.e., Bursar is not a feeder cadre for promotion. The only contention of the petitioner is that the petitioner was a senior most Superintendent, when she was promoted to the post of Bursar without calling for option. Therefore, the petitioner should have been granted one more opportunity also. If that being the case, cause of action for the petitioner arose in the year 2009. The petitioner never questioned the same.



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12. The further contention of the learned counsel for the petitioner is that the post of Bursar as well as the post of Assistant Director etc., carry the same pay scale and the post of Assistant Director can also be filled up by transfer from the post of Bursar. That may be so. But so long as the petitioner was not transferred and posted as Assistant Director, she is not borne in the feeder cadre of Assistant Director. When she is not borne into the cadre of Assistant Director, she cannot claim promotion.

13. By transfer, the first mode of transfer is from Deputy Director cadre and the second mode is from any other cadre. Therefore, transfer would be from the employees who are working in posts carrying identical pay scale. When the petitioner is in the lower cadre she has no right to insist to be transferred as Deputy Director.

14. In that view of the matter, I find no merits in the claim of the petitioner. Though there may be a grievance that the petitioner could have also been posted as the Assistant Director and thereafter, could have been



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considered by the vacancy in the post of Deputy Director, much water has flown in respect thereof and the petitioner never challenged her posting as Bursar in the year 2007 or her continuance in the same post. She chose to retire from service on voluntary basis. In view thereof, she cannot now seek to redress her grievance and therefore, this Court is not inclined to grant any relief to the petitioner.

15. The writ petition stands dismissed. No cost. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

rgm

To

1. The Additional Chief Secretary to Government,
The Government of Tamil Nadu,
Tourism, Culture and Religious Endowments Department,
Secretariat,
Chennai – 600 009.
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