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W.P.No.13851 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.13851 of 2019

and

W.M.P.No.13929 of 2019

T.Thankachristy

... Petitioner

Vs.

1. The Registrar General,
High Court of Judicature at Madras,
High Court Buildings,
Chennai – 600 104.
2. The District and Sessions Judge,
Kannyakumari at Nagercoil,
Kanyakumari District.
3. Mr.M.Chinnakani
4. Mrs.T.Jeyasudha
5. Mrs.K.S.Jeyanthi
6. Mrs.S.Sreemathy
7. Mrs.G.Jessy Jannet



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8. Mrs.K.Santhi

9. Mrs.V.Prema

10. Mr.C.Johnraj

11. Mrs.R.S.Priyarekha

12. Mrs.Omanakumari

13. Mrs.C.Maria Grace

14. Mr.V.Dhanabalan

15. Mrs.L.Saraswathy

16. Mr.M.Manimuthu

17. Mr.S.Ayyappan

18. Mrs.K.Selvalekshmi

19. Mrs.A.Indra

20. Mrs.M.Rose Lilly Rani

21. Mr.S.Mankai Manavalan

22. Mr.K.Thanu

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 13.04.2018 in ROC No 1120/2015/C1 quash the same and direct the Respondents 1 and 2 to promote the petitioner as Grade II Bench clerk from 01.12.2009 with retrospective benefits from



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the date when the 3rd respondent was promoted and subsequent promotions in class IV category III of TNJMS CLASS IV category II of TNJMS Bench clerk Grade I, Class IV category I of TNJMS (Sheristadar) with retrospective benefits.

For Petitioner : Mrs.V.S.Manimekalai
for M/s.Devadason and Sagar

For R1 & R2 : Mr.B.Vijay

For R3 to R22 : No appearance

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The Writ Petition has been filed for calling for the records of the 1st respondent dated 13.04.2018 in ROC No 1120/2015/C1 quash the same and direct the Respondents 1 and 2 to promote the petitioner as Grade II Bench clerk from 01.12.2009 with retrospective benefits from the date when the 3rd respondent was promoted and subsequent promotions in class IV category III of TNJMS CLASS IV category II of TNJMS Bench clerk Grade I, Class IV category I of TNJMS (Sheristadar) with retrospective benefits.



2. The writ petitioner was appointed as Typist on 25.05.1992. She was promoted to the post of Assistant on 31.03.2004. As per the Service Rules, a Typist on promotion to the post of Assistant in the Ministerial line shall undergo the Foundation Training at Civil Services Training Institute at Bhavanisagar within a period of two years from the date of their promotion as Assistant. Rule 35(ab) of Tamil Nadu Ministerial Service Rules prescribes the time limit of two years to undergo the Bhavanisagar training. The writ petitioner was provided with an opportunity to under the Bhavanisagar training on 11.04.2007. The writ petitioner refused to undergo the training and submitted leave application on medical grounds. Again, the writ petitioner was directed to undergo Bhavanisagar training on 10.07.2007. Once again, the writ petitioner applied Casual Leave and sought for exemption from undergoing Bhavani Sagar training. Since the Bhavani Sagar Training is mandatory, the competent authorities declined to grant exemption, as such sought for by the writ petitioner. Therefore, disciplinary proceedings were initiated seeking her explanation for failure to undergo Bhavanisagar training vide proceedings dated 21.04.2009. The writ petitioner was once again



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provided with an opportunity to undergo the Bhavanisagar training on 22.05.2009. The writ petitioner again refused to undergo Bhavanisagar training on medical grounds. Fourth opportunity was granted to the writ petitioner to undergo Bhavanisagar training vide letter dated 19.06.2006. Since the writ petitioner was continuously refusing to undergo Bhavani Sagar training, which is mandatory under Rule 35(ab) of the Tamil Nadu Ministerial Service Rules, disciplinary proceedings were initiated in proceedings dated 13.10.2009. A charge-memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued for the misconduct of unauthorized absence. Subsequently, the writ petitioner was transferred to Theni District on 10.11.2009. The writ petitioner filed Writ Petitions in W.P.Nos.2666 and 2677 of 2010, challenging the order of transfer and the charge-memo issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The Hon'ble Division Bench of this Court declined to interfere with the disciplinary proceedings and granted liberty to the petitioner to make a representation regarding the transfer. Thereafter, the writ petitioner was promoted to the post of Head Clerk from the post of Assistant on 27.11.2011. On 17.03.2012, the writ



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petitioner completed Bhavanisagar training. In the year 2015, a representation was submitted by the writ petitioner seeking revision of seniority, which was rejected by the High Court on merits. The writ petitioner was further promoted as Bench Clerk Grade II from the post of Head Clerk on 25.03.2015. A Review Petition dated 07.10.2015 was filed seeking review of the rejection order dated 10.02.2015. The writ petitioner filed Writ Petition dated W.P (MD) No.325 of 2017 to treat the Medical Leave as duty period, which was disposed of by directing the authorities to consider her representation on merits. The Review Petition filed by the writ petitioner was rejected by the High Court on 13.04.2018. In the Departmental disciplinary proceedings, the punishment of “censure” was imposed vide proceedings dated 13.04.2018, which is under challenge in the present writ proceedings.

3. The learned counsel for the writ petitioner, Smt.Manimekalai would submit that the writ petitioner declined to undergo Bhavanisagar training on medical grounds. Her repeated requests to grant exemption was not entertained. Thus, the writ petitioner has not committed any



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default. However, she had completed the training in the year 2012. Thus, the case of the writ petitioner ought to have been considered for grant of retrospective promotion on par with her Juniors. Her Juniors were promoted long before her promotion to the post of Head Clerk and thus, the case of the writ petitioner is to be considered for grant of retrospective promotion. It is further contended that the contesting respondents in the writ proceedings were also not undergone the Bhavanisagar training and the writ petitioner alone was discriminated and thus, the Writ Petition is to be considered.

4. The learned counsel for the respondents 1 and 2, Mr.Vijay would oppose the said contention by stating that Bhavanisagar training is a mandatory training, contemplated under the Rule 35(ab) of the Tamil Nadu Ministerial Service Rules. Unless an employee has undergone the training, he/she is not entitled for declaration of probation in the Ministerial post. Therefore, grant of permanent exemption from undergoing the Bhavanisagar training would not arise at all. The letter relied on by the writ petitioner is untenable, since it was not issued by the



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Government. Temporary exemption can be sought for on medical grounds. However, in the present case, more than four opportunities were granted to the writ petitioner to undergo training and during all such occasions, the writ petitioner declined to undergo Bhavanisagar training. Thus, the writ petitioner committed an act of misconduct and further remained unauthorizedly absent and therefore, Departmental disciplinary proceedings were initiated.

5. Mr.Vijay, learned counsel for the respondents 1 and 2 would contend that the cause raised in the present Writ Petition is untenable. A dead cause was restored after a lapse of many years. The case of the writ petitioner was considered on merits and rejected by the High Court in the year 2015 itself. Thereafter, in the year 2018, the Review Petition filed by the writ petitioner was rejected. That being so, now the case of the writ petitioner cannot be considered. She had already attained the age of superannuation and retired from service. Regarding the reliance placed by the writ petitioner that the other employees, who have not undergone the training were considered, the High Court will look into the matter.



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6. Mr.Vijay, learned counsel for the respondents 1 and 2 would contend that except one differently-abled candidate, all other candidates had underwent Bhavanisagar training. However, the fact in this aspect is directed to be verified by the High Court and if any employee has not undergone the mandatory Bhavanisagar training, then all appropriate actions are to be taken to verify the service records of the contesting respondents in the present Writ Petition and initiate necessary actions in the manner contemplated under the relevant Service Rules in force.

7. As far as the claim of the writ petitioner is concerned, she had refused to undergo the Bhavanisagar training despite the fact several opportunities were provided. Further, the writ petitioner suffered Departmental disciplinary proceedings and therefore, she is not entitled to secure the relief of retrospective promotion from the hands of this Court.

8. Thus, the Writ Petition is devoid of merits and stands dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.



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(S.M.S.,J.) (K.R.S.,J.)
04.03.2024

skr
Index : Yes
Speaking order

To

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2. The District and Sessions Judge,
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S.M.SUBRAMANIAM, J.
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