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W.P.No. 14619 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 14619 of 2017

M. Jesintha

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep., by the Secretary to Government,
Personnel and Administrative Reforms
(P) Department, Fort St.George,
Chennai – 600 009.

2.The Commissioner of Tourism,
Wallajah Road, Chennai – 600 002.

3.The Additional Director,
Office of the Commissioner of Tourism,
Wallajah Road, Chennai – 600 002.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in Memo No.6576/Ma.Va.Me-2/2014 dated 26.06.2015 and quash the same and direct the respondents to regularise the petitioner's services in the post of Typist with effect from the date of her initial appointment on 14.02.1991 and grant her all consequential benefits including promotion on par with her juniors and render justice.



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For Petitioner : Mr. P. Rajendran

For Respondents : Mr. L.S.M. Hasan Fizal,
Additional Government Pleader

ORDER

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

2. The case of the petitioner is that she was initially appointed as Typist in the Department of Tourism on 14.02.1991. The said appointment was made under Rule-10 (a) (1) of the Tamil Nadu State and Subordinate Services Rules. A Special Qualifying Examination for all the temporary Typists who are recruited through the employment exchange was conducted by the Tamil Nadu Public Service Commission in the year 1995. The petitioner appeared in the said examination and declared as qualified. The service of the temporary Junior Assistants / Typist who are declared qualified in the above examinations were regularised with effect from the date of appointment and accordingly, the service of the petitioner was regularised in the post of Typist with effect from 11.03.1997. Thereafter date of regularisation was modified as 24.06.1995 i.e., the date on which the Special Qualifying Examination was conducted. Some of the temporary Junior Assistants / Typist who did not get qualified in the Special Qualifying Examination and faced termination of service approached the Tamil Nadu Administrative Tribunal and obtained interim orders for continuation of service. Finally the Tribunal allowed the original applications filed by



them directing the respondents to regularise the service of the petitioner with their initial appointments.

3. Though the State filed writ petition before this Court by filing W.P.No.6331 of 2004 and batch, the said writ petition was dismissed. Subsequently, the Government of Tamil Nadu issued orders in G.O.Ms.No.124, Personnel and Administrative Reforms (P) Department, dated 12.09.2009 regularising the services of those persons who failed in Special Qualifying Examination conducted in 1995 from the date of their initial appointment. Seeking the same relief, the petitioner made a representation to the second respondent on 22.09.2014 requesting for regularisation of her service with effect from 14.02.1991 i.e., the date on which she was initially appointed. The said request was rejected by the second respondent vide Memo No.6576/Ma.Va.Me-2/2014 dated 26.06.2015 stating that her services cannot be regularised with effect from the date of her initial appointment since her name did not find place in the order of the High Court. Aggrieved by the same, the present writ petition is filed.

4. Considering the facts and circumstances of the case, this Court is unable to accept the reasons recorded by the respondents in the order impugned in this writ petition. As and when, the disqualified candidates in the qualifying examination got regularisation of their service from the date of their initial appointment, in the light of



the order of the Tamil Nadu Administrative Tribunal and the order of this Court, the reasons stated by the respondents for not considering the request of the petitioner for regularisation of service from the date of her initial appointment is that her name is not find in the High Court order is irrational, unreasonable and untenable. The respondents ought to have considered that whether the petitioner is entitled for her request for seeking regularisation of her service from initial date of appointment or not. It appears, by issuing such order, the respondents are also trying to drag the petitioner to the litigation without doing their legitimate duties, which is not acceptable.

5. However, during the course of hearing, the learned counsel appearing for the respondents fairly submitted that during the pendency of this writ petition, the State Government has issued G.O.Ms.No.89, Personnel and Administrative Reforms (P) Department, dated 28.07.2020 clarifying the conditions of service to Tamil Nadu Special Qualifying Examination Rules, 2000 and he has placed a copy of the said G.O., before this Court.



6. On perusal of the same, it appears that the Government has examined the issue in detail and issued orders for fixation of seniority. It is stated in the said G.O., that the date of initial appointment is fixed as the criteria for fixation of seniority, irrespective of the fact whether the candidates have passed or failed in the said examination, if the passed and the failed candidates have been appointed to the service on the same day, without reference to the statutory provision of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016 in Section 40, their seniority shall be fixed in accordance with their age, i.e., elder person shall be senior.

7. In the considered opinion of this Court, this clarification would be sufficient to extend the benefit of seniority to the petitioner from the date of her initial appointment.

8. Under these circumstances, for the reason stated above, the order impugned in this writ petition will not sustain under law and as such, it is liable to be quashed.

9. Accordingly, this Writ Petition is allowed with the following direction: -

(i) The order impugned in this writ petition in Memo No.6576/Ma.Va.Me-2/2014 dated 26.06.2015 is hereby quashed.



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(ii) The respondents are directed to fix the seniority of the petitioner from her date of initial appointment i.e., on 14.02.1991 in the post of Typist as per the clarification issued in G.O.Ms.No.89, Personnel and Administrative Reforms (P) Department, dated 28.07.2020 within a period of two months from the date of receipt of copy of this order.

10. There shall be no order as to costs.

22.03.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To

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