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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.6161 of 2024

T.Vani ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.109, Uthamar Gandhi Road,
Nungambakkam,
Chennai – 600 034.

2.The Deputy Commissioner/Executive Officer,
Arulmigu Kallalagar Thirukkovil,
Alagarkovil,
Melur Taluk,
Madurai District.

3.The Thakkar,
Arulmigu Kallalagar Thirukkovil,
Alagarkovil,
Melur Taluk,
Madurai District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to promote the petitioner as PARA (Guard) or Office Assistant under the category XI post in Arulmigu Kallalagar Thirukovil, Alagarkovil, Melur Taluk, Madurai District by

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considering the representation of the petitioner dated 18.10.2023 and 12.02.2024 within the period stipulated by this Court.

For Petitioner : Mr.N.Sathish Babu
For 1st Respondent : Mr.B.Saravanan
Additional Government Pleader
For Respondents 2 & 3 : Mr.S.Manohar
Standing Counsel

ORDER

By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

2.This Writ Petition has been filed for issuance of a Writ of Mandamus, seeking to direct the respondents to promote the petitioner as PARA (Guard) or Office Assistant under the category XI post in Arulmigu Kallalagar Thirukovil, Alagarkovil, Melur Taluk, Madurai District by considering the representation of the petitioner dated 18.10.2023 and 12.02.2024.

3.The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i)The petitioner's father was working as a Driver at Arulmigu Kallalagar Thirukovil and died on 16.07.2017, while he was in service. The petitioner applied for the employment under the compassionate ground. Considering his request, the second

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respondent vide order dated 20.01.2021, appointed the petitioner as Sweeper on time scale of pay and his monthly salary has been filed as Rs.10,000/-. The petitioner has completed his probation on 21.01.2023. The petitioner has got the requisite qualification to be appointed as Para (Guard) or Office Assistant and hence, he approached the respondents 2 and 3 requesting them to promote him to the post of Para (Guard) or Office Assistant. However, his request was not considered. While so, on 07.07.2021, the impugned notification inviting applications for 25 vacancies for the post of Para (Guard) was notified in “Thina Thanthi” Tamil Daily, dated 09.08.2021 calling for applications from eligible candidates.

(ii)One Alaguponnu and others, who are also working along the petitioner filed a Writ Petition in W.P.(MD)Nos.15555 to 15559 of 2021, challenging the said notification, dated 07.07.2021. This Court by its order dated 09.08.2023, disposed of the said Writ Petition. Thereafter, the petitioner has sent a representation on 18.10.2023 and 12.02.2024 to the respondents to promote the petitioner as Para (Guard) or Office Assistant under the category XI post in Arulmigu Kallalagar Thirukkovil, Alagarkovil, Melur Taluk, Madurai District. However, the same was not considered. Hence,

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this Writ Petition came to be filed.

4.The learned counsel appearing for the second respondent submitted that the petitioners cannot claim their right to be considered for promotion to the post of Para (Guard) as a matter of right because of the amendment brought to the Tamil Nadu Hindu Religious Institution Employees (Condition of Service) Rules, 2020, vide G.O.Ms.No.114, Tourism, Culture and Religious Endowments Department, dated 03.09.2020. Before the said amendment, the feeder category for the post of Para was obviously Sweeper post. However, pursuant to the issuance of G.O.Ms.No.114, Tourism, Culture and Religious Endowments Department, dated 03.09.2020, the rules with respect to the said post has been amended to the effect that recruitment could be made only by direct recruitment. In view of the same, the petitioners cannot claim the earlier position of law. Hence, the petitioners- claim, to be promoted to the post of Para from the post of Sweeper, cannot be entertained and on that basis, the learned counsel appearing for the second respondent pressed for dismissal of the Writ Petition. He further relied upon a similar case dealt with by this Court in ***W.P(MD)Nos. 14361 to 14363 of 2021***, dated 15.11.2022 (***M.Muthulakshmi***

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and others Vs. The Commissioner and others) and the relevant portion of which is extracted as follows:~

> *"6. There is no dispute that there were vacancies in the post of Junior Assistants before the introduction of new Rules. The Hon'ble Division Bench vide order dated 05.07.2013 had held that the vacancies which had arisen before the introduction of new Rules will have to be filled up with reference to the then existing rules. As per earlier Rules, the petitioners were definitely qualified to be promoted as Junior Assistants.*
>
> *7. But in the recent decision of the Hon'ble Apex Court reported in (2020) 18 SCC 1 (D.Raghu Vs. R.Basaveswarudu), it has been held that the employer is not obliged to fill up all the vacancies which might arise and secondly, when action is taken up for filling up the vacancies, statutory rules prevailing then alone will have to be applied.*
>
> *....*
>
> *10. The Hon'ble Supreme Court on more than one occasion held that during one-s career, one must have an opportunity to be considered for alteast two promotions. I therefore expect the employer to ensure that the petitioners are given promotion atleast to Category~XI Posts within a period of two months from the date of receipt of a copy of this order."*

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5.Acknowledging the fact that the petitioners therein cannot claim the benefit of the earlier Rules despite amendments in the earlier Rules thereby bringing in new Rules, this Court has dismissed the aforesaid Writ Petitions. However, an observation on equity has been made by this Court that any person should be considered for promotion atleast once during their career or atleast twice during their career and hence, the employer is expected to ensure the petitioners by giving promotion atleast to the Category~XI posts.

6.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent, the learned counsel appearing for the respondents 2 and 3 and carefully perused the entire materials available on record.

7.In view of the above, this Court, in line with the said order, hereby direct the first respondent to consider the case of the petitioner who is a basic service employee, and promote her to the Category~XI posts within a period of twelve weeks from the date of receipt of a copy of this order.

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8.With the above direction, this Writ Petition stands disposed of. There shall be no order as to costs.

14.03.2024

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

To

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L.VICTORIA GOWRI, J.

Mrn

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