



W.P.(MD)No.10514 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.10514 of 2024 &
W.M.P.(MD)No.9438 of 2024

Kottai Eswari

... Petitioner

VS.

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Director General of Police,
Head Police Force, Tamilnadu,
Chennai - 600 004.

3.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records in relation to the impugned order of the first respondent in G.O[D]No.1464, Home [Police 15] Department dated 18.12.2018 and the consequential impugned order of the second respondent in Rc.No. 7011916/NGB II[1]/2024 dated 04.04.2024 and to quash the same and consequently, to direct the respondents to grant promotion, increments



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and all monetary benefits to the petitioner within the time limit that may be stipulated by this Court.

For Petitioner : Mr.S.Jeyakarthik

For Respondents : Mr.T.Amjadkhan,
Government Advocate

ORDER

Heard Mr.S.Jeyakarthik, learned counsel for the petitioner and Mr.T.Amjadkhan, learned Government Advocate for the respondents.

2. The petitioner has filed this petition seeking Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the first respondent in G.O[D]No.1464, Home [Police 15] Department, dated 18.12.2018, and the consequential impugned order of the second respondent in Rc.No.7011916/NGB II[1]/2024 dated 04.04.2024, to quash them and consequently, direct the respondents to grant promotion, increments and all monetary benefits to her within a stipulated time.



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3. The petitioner who was appointed as Data Entry Operator on 14.09.2005 and subsequently, appointed as Junior Assistant on 19.04.2007 in the third respondent Office is aggrieved due to the order of regularization which regularized her on the condition that she is entitled to monetary benefits alone and she is not entitled to any service benefits like promotion. The first respondent through impugned order dated 18.12.2018, regularized the petitioner's service, wherein it is stated that the petitioner has completed Pre-foundation course as qualification and she did not do SSLC directly and hence, she is not entitled to any further promotion. In the impugned order passed by the second respondent dated 04.04.2024, it has been stated that the petitioner's appointment is a special case and she is barred from further promotion.

4. Mr.S.Jeyakarthik, learned counsel appearing for the petitioner submitted that as per G.O.Ms.No.528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985, the Pre-Foundation Course done under Madurai Kamaraj University is equivalent to SSLC of the Tamilnadu Government, for the purpose of



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entering into public service in Tamilnadu. However, the Government has issued a subsequent Government Order in G.O.Ms.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 by fixing a cut-off date that only those persons who have passed Pre-Foundation Course prior to 18.08.2009 can be recognized and the persons who have passed Pre-Foundation Course after the cut-off date cannot be recognized for having acquired qualification equivalent to that of SSLC.

5. But, in the instant case, the petitioner secured employment on 19.04.2007, even before the issuance of the Government Order in G.O.Ms.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009.

6. In fact, another Government Order in G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 has also been issued by accepting the Equivalence Committee Report, which would state that the Pre-Foundation Course cannot be treated as equivalent to that of SSLC. In pursuance thereof, the employees who



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have been given with the employment were either de-promoted or de-barred for any further promotion. In this regard, several litigations have been filed by the aggrieved persons and orders have been passed stating that all those persons who have passed Pre-Foundation Course before the issuance of G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 are eligible for promotion and G.O.Ms.No. 144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 can be given effect only retrospectively.

7. Mr.T.Amjadkhan, learned Government Advocate for the respondents submitted that contradictory views have been given by two Single Judges in respect of giving effect to G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017, either prospectively or retrospectively, and hence, the issue has been referred to a Larger Bench of this Court by an order dated 13.07.2023 made in Writ Appeal in *W.A.(MD)No.462 of 2014*, in the case of *Murugesan Vs Tamil Nadu State Transport Corporation, Vannarapet, Tirunelveli through its Managing Director*.



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8. It is worthwhile to extract the portion of the order below for the purpose of better understanding.

7.The above letter has been issued on the heels of G.O.Ms.No.107 and, according to G.O.Ms.No.144, has been applied from the date of issue of G.O.(Ms) No.107 dated 18.08.2009. Thus, the position appears to be that, though a benefit was granted under G.O.Ms.No. 107 dated 18.08.2009, it was immediately withdrawn by issuance of letter dated 03.12.2010. It is unclear as to whether the aforesaid letter is unavailable in public domain.

8.The above paragraphs capture the background to the matter. The parties place before us two series of orders. In one series, that is 2011 SCC OnLine Mad 209 (Order dated 10.02.2011), CDJ 2019 MHC 2929 (Order dated 19.07.2019), CDJ 2021 MHC 3466 (Order dated 15.04.2021) and W.A.(MD)No.471 of 2021 (order dated 20.07.2021), Division Benches of this Court have taken a view that the benefit granted under G.O.(Ms).No.107 stands nullified by G.O.Ms.No.144 dated 20.11.2017 and a foundation course cannot be equated to High Secondary Course. Reference is made to letter dated 03.12.2010

9.In a recent decision of a Division Bench reported in 2022 SCC OnLine Mad 6177, a Division Bench has taken a view that G.O.Ms.No.144 dated 20.11.2017, would operate prospectively.



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Thus, appointments made prior to 20.11.2017 have been held to be entitled to the benefit granted under G.O.Ms.No.107 dated 18.08.2009 and other similar Government Orders passed for earlier periods as well.

9. So far as this petition is concerned, the petitioner is neither affected by G.O.Ms.No.107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 nor by G.O.Ms.No.144, Personnel and Administrative Reforms (M) Department, dated 20.11.2017 because, this petitioner has been appointed even prior to the issuance of the above two Government Orders. Since the petitioner is covered under G.O.Ms.No. 528, Personnel and Administrative Reforms (Per.R) Department, dated 18.05.1985, there need not be any confusion in granting promotion to her without having any confusion as to the application of subsequent Government Orders issued in the year 2009 and 2017 respectively. Since the petitioner's qualification was found to be fit at the time of her employment and all other Government Orders have been passed consequently, the petitioner's position is safely protected and she



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is entitled to be regularized without any conditions attached. To make it more clear, the above Government Orders issued in the years 2009 and 2017 have no application to the case of the petitioner.

10. In view of the above stated reasons, the writ petition is **allowed** and the order of the first respondent in G.O[D]No.1464, Home [Police 15] Department dated 18.12.2018 and the consequential order of the second respondent in Rc.No.7011916/NGB II[1]/2024 dated 04.04.2024 are quashed and the first respondent is directed to pass fresh orders to regularize the petitioner's services without placing any bar to her further promotion / increment / or any other service benefits attached to her regularization and release monetary benefits if any withheld in view of the impugned orders, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

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NCC: Yes
Index : Yes
Speaking order
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Secretariat, Chennai - 600 009.
- 2.The Director General of Police,
Head Police Force, Tamilnadu,
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- 3.The Superintendent of Police,
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R.N.MANJULA, J.

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