



W.P.(MD) No.17773 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 14.02.2024

ORDER PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.17773 of 2020

and

W.M.P.(MD) No.14842 of 2020

R.Dhanalakshmi

... Petitioner

Vs.

1.The Secretary to Government,
Labour and Employment Department,
St. Fort George,
Chennai-600 009.

2.The Assistant Director,
Town Panchayats,
Trichy Zone,
Trichy-1.

3.The Executive Officer,
Uppiliapuram Town Panchayat,
Thuraiyur Taluk,
Trichy District.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.no.159/2019, dated 07.06.2019 passed by the 3rd respondent and quash the same as illegal and consequently direct the respondents to appoint the petitioner in the post of Junior Assistant in the office of the 3rd respondent.

For Petitioner : Mr.N.Anandkumar

For Respondents : Mr.D.Sasikumar
Additional Government Pleader

ORDER

Heard Sri N.Anandkumar, learned counsel for the petitioner and Sri D.Sasikumar, learned Additional Government Pleader appearing for the respondents.

2.1. The brief facts, that are relevant for the disposal of this writ petition, are as under:

2.2. The father of the petitioner herein, while working as Sweeper in the 3rd respondent-Town Panchayat, died in harness on 11.11.2003



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leaving his wife, two daughters and one son. The wife of the deceased employee made an application for appointing her daughter, the petitioner herein on compassionate grounds as Sweeper. As the petitioner herein was minor by then, the District Collector, Tiruchirappalli, directed the 3rd respondent to keep the name of the petitioner in the waiting list for appointment on compassionate grounds at the 3rd respondent-Town Panchayat till she attains majority. The petitioner, after attaining the age of 18 years, submitted an application dated 05.10.2012 requesting her to be appointed in the vacancy of Sweeper on compassionate grounds. Considering the said application and having satisfied with her candidature for appointment on compassionate grounds, she was appointed as Sweeper in the 3rd respondent-Town Panchayat through proceedings in Na.Ka.No. 189/2004, dated 04.02.2013. The petitioner joined in the said post and continued for more than 5 years and then submitted a representation dated 11.07.2018 before the 3rd respondent by placing reliance on G.O.(Ms).No. 1499, Labour and Employment Department, dated 03.08.1989 seeking to appoint her to the post of Junior Assistant. Complaining non-consideration of the said representation, the petitioner approached this Court by filing



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W.P.(MD) No.16728 of 2018 and the same was disposed of by this Court by an order dated 25.02.2019 directing consideration of the representation submitted by the petitioner. On considering the said representation, the 3rd respondent passed the impugned order bearing Na.Ka.No.159/2019, dated 07.06.2019 rejecting the claim of the petitioner for appointment to the post of Junior Assistant in the office of the 3rd respondent. Aggrieved by the said order, the present writ petition is filed.

3. Learned counsel for the petitioner contended that in terms of G.O(Ms).No.1499, dated 03.08.1989, the appointing authorities, under no circumstances, appoint a dependant to a lower post, when the dependants possess the qualification required for the post of Junior Assistant/Typist on the ground of non-availability of vacancy in the office or Department and in such circumstances, they should follow the existing procedure of approaching the Collector of the District for providing suitable vacancy. According to the learned counsel for the petitioner, in the instant case, the 3rd respondent, instead of appointing the petitioner to the post of Junior Assistant, though she was fully qualified, appointed the petitioner only as a



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Sweeper and thereby violated the Government Order issued in G.O.(Ms).No.1499, 03.08.1989. It is also contended that in spite of the specific direction issued by this Court to consider the claim of the petitioner, in terms of G.O.(Ms).No.1499, dated 03.08.1989, the 3rd respondent has not taken into consideration the said Government Order, while passing the impugned order.

4. On the other hand, the learned Additional Government Pleader, while reiterating the contentions raised in the counter affidavit, contended that the petitioner herself and on her own volition submitted an application for appointment to the post of Sweeper and accordingly, she was appointed to the post of Sweeper on compassionate grounds by the 3rd respondent. As the petitioner's request itself is for appointing her to the post of Sweeper, she is not entitled to question her appointment and seek appointment to the post of Junior Assistant, that too, after worked as Sweeper for more than 5 years. It is also further contended that the post of Sweeper is a non-provincialised one and whereas the post of Junior Assistant is a provincilised post by virtue of the orders issued by the Government in



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G.O.Ms.No.64, Rural Development Department, dated 05.02.1985 and therefore, the post of Junior Assistant is a District Cadre Post, which is not within the scope of the 3rd respondent for considering the case of the petitioner for appointment to the post of Junior Assistant. Thus, it is contended that in case, if the petitioner is interested in consideration of her case for the post of Junior Assistant, while making an application for compassionate appointment, her application would have been properly placed by putting the name of the petitioner in the seniority list/waiting list, that is maintained for appointment to the post of Junior Assistant, which is a District Cadre Post.

5. This Court has carefully considered the submissions made by the learned counsel on either side.

6. It is not in dispute that the petitioner herself made a request for appointing her as Sweeper on compassionate grounds while submitting her application in the year 2012. The said application was considered and she was appointed as Sweeper on 20.02.2013 and she worked in the said post



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for more than 5 years. Then having come to know that a vacancy arose in the cadre of Junior Assistant in the office of the 3rd respondent, started making a claim for appointment to the post of Junior Assistant for the first time in the year 2018. As the petitioner herself sought appointment to the post of Sweeper and the same was acceded to by the 3rd respondent, the petitioner is estopped from making a claim contrary to her own application. Further, it is not the case of the petitioner that there was a vacancy of Junior Assistant available as on the date of the petitioner making such an application for compassionate appointment. Even if there is any such vacancy, the same is not within the purview of the 3rd respondent, as the post of Junior Assistant is a provincialised one and the District is the unit for appointment to the post of Junior Assistant or for considering the claims of various candidates on compassionate grounds, it will not be within the purview of the 3rd respondent. There was no occasion for Respondent No.3 to even forward her application to the District Collector, as the request of the petitioner to appoint her as Sweeper was complied with. The District Collector concerned is not made party to this writ petition.



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7. So far as the reliance placed by the learned counsel for the petitioner on the decisions of this Court in W.P.(MD) No.77 of 2011, dated 12.02.2013 and W.P.(MD) No.7896 of 2011, dated 30.11.2012 are concerned, the said orders were passed by considering the effect of G.O.(Ms).No.1499, dated 03.08.1989 in the facts and circumstances of the said case. But in the instant case, the petitioner herself made a request for appointing her to the post of Sweeper and the same was considered positively by the 3rd respondent. Therefore, it is not open for the petitioner herein to turn around and make a claim for appointing her to the post of Junior Assistant after a lapse of 5 years as a vacancy arose in the cadre of Junior Assistant in the office of the 3rd respondent.

8. The very purpose of providing compassionate appointment is to mitigate the immediate circumstance resulting from the sudden demise of the Government servant and the same was rightly met in the instant case by appointing the petitioner to the post of Sweeper.



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9. In the light of the above, this Court does not find any error or illegality in the impugned order dated 07.06.2019 passed by the 3rd respondent and accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.03.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

1.The Secretary to Government,
Labour and Employment Department,
St. Fort George,
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2.The Assistant Director,
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MUMMINENI SUDHEER KUMAR, J.

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Pre-delivery Order made in
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