

W.P. No. 19526 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 19526 of 2018

and

W.M.P. No. 22965 of 2018

R. Jothi Meenakshi

... Petitioner

Vs.

1.The Commissioner of Business,
SIDCO Ind Estate,
Guindy, Chennai – 600 032.

2.The Deputy Director,
Chemicals, Guindy,
Chennai – 600 032.

3.The Superintendent,
RMS 'CB' Division,
Coimbatore – 641 001.

4.The Supervisor (incharge),
Tamil Nadu Government Glass
Tools Manufacturing Plant,
Coimbatore – 14.

... 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 entire records on the file of the fourth respondent vide proceedings in Na.Ka.No.67/A/2016 dated 28.04.2017 and quash the same, consequently direct the respondents to promote the petitioner and regularise her service with effect from the date of promotion with all monetary benefits to the petitioner.



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For Petitioner : Mr. K. Sivasankar
for Mr. S. Saravanan

For Respondents : Mrs. R.L. Karthika,
Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

2. The case of the petitioner is that, she was temporarily appointed as Unskilled Worker through Coimbatore Employment Exchange on merits on 31.08.1994 in Government Production Centre for Scientific Glass Apparatus, Coimbatore and joined service from 05.09.1994. The services were regularised on 12.01.1996 with effect from 05.09.1994. All of a sudden, she was ousted from service with effect from 26.08.1996. Thereafter, she was temporarily appointed as Office Assistant in the office of District Industries Centre, Erode by an order dated 20.02.1998 after a lapse of one and half years from the date of ousting from service. While she was serving as Office Assistant, she was re-appointed as Unskilled Worker in Government Production Centre for Scientific Glass Apparatus by an order dated 19.03.1999 and accordingly, relieved from the Office Assistant post on 30.03.1999. She was posted in the post of Unskilled Worker on 31.03.1999, subsequently, she was regularised with effect from 31.03.1999 by an order dated



20.12.2001. She also completed her probation period satisfactorily and it was declared by an order dated 23.12.2001.

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3. The grievance of the petitioner is that, from the date of appointment, she has been serving as Unskilled Labour for the past 21 years without any promotion. She made request to promote her from the post of Unskilled Worker. But no action has been taken on the representation submitted by the petitioner. One Chinnathambi who was appointed as Unskilled Worker ever after appointment of the petitioner, who is being junior to her was promoted to the post of Skilled Worker Grade-I. Similarly, Kannaiyan and Paramasivam who were also appointed as Unskilled Worker were promoted and regularised with high scale of pay. All those persons who are promoted are retired from service, while working as Skilled Worker Grade-II.

4. Learned counsel for the petitioner submits that the petitioner should have been promoted to the post of Skilled Worker Grade-II, Skilled Worker Grade-I, Assistant Trainer, Trainer and ought to have regularised in that post. Hence, the petitioner requested the respondents to fix the salary with a basic scale pay of Rs.5200+2800. As the respondents did not consider the case of the petitioner for due promotion, regularisation and to increase of pay, the petitioner put to loss of salary and great hardship. Against the inaction of the respondents in considering her

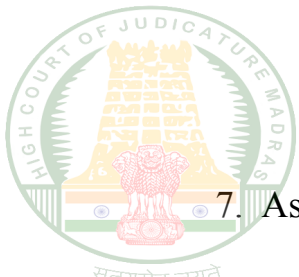


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request, she filed a W.P. No. 3164 of 2017 and the same was disposed on 09.02.2017 with a direction to the third respondent therein, to consider and dispose of the petitioner's representation dated 28.11.2015 on merits and in accordance with law and pass orders within a period of eight weeks from the date of receipt of copy of this order.

5. In compliance of the same, the fourth respondent issued proceedings in Na.Ka.No.67/A/2016 dated 28.04.2017 stating that the petitioner is not entitled to get promotion and for regularisation of her service with effect from the date of promotion with all monetary benefits. The said proceedings are impugned in the present writ petition.

6. Learned counsel would submit that the impugned order of the fourth respondent dated 28.04.2017 is liable to be quashed on the ground that the fourth respondent did not consider the unblemished record of service of the petitioner and her eligibility of getting promotion. Learned counsel further contends that the fourth respondent failed to consider the fact that the petitioner has completed 21 years of service and she is eligible for promotion. But the respondents have purposefully promoted her juniors without considering the petitioner, which is arbitrary, illegal and against the equity and fair play.



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7. As per G.O.Ms.No.1072 dated 31.10.1986, the petitioner is entitled for promotion and service regularisation and for all monetary benefits with effect from that date. But the fourth respondent failed to take into account the government orders and issued impugned order, in non application of mind. As such, it is liable to be quashed. Learned counsel further submits that there is no specific enabling provision to regularise the period from 27.08.1996 to 24.02.1998 as break in service in the government rules. More over, the working period from 25.02.1998 to 30.03.1999 as Office Assistant cannot be taken into account as seniority, yearly salary increment, selection process and promotion. The petitioner submits that the post of Office Assistant and post of Unskilled Worker are entirely different as per the rules.

8. Finally, the learned counsel submits that on the basis of the service of the petitioner, she should have been promoted to the post of Skilled Worker Grade-II, Skilled Worker Grade-I, Assistant Trainer, Trainer and ought to have regularised in that post and ought to have extend all monetary benefits to her. Accordingly, the learned counsel for the petitioner sought to set aside the impugned order as discriminatory and arbitrary and requested to allow the writ petition.

9. On behalf of the respondents, a counter affidavit has been filed. Based on the averments of the counter affidavit, the learned Government Advocate appearing



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for the respondents would submit that the petitioner was appointed as Unskilled Worker and joined duty on 31.03.1999 and her service was regularised from 31.03.1999 A.N. vide proceedings of the Joint Director (Chemicals), Chemical Testing and Analytical Laboratory, Guindy, Chennai-32, dated 20.12.2001. Further, probation was declared on 17.04.2001 vide proceedings of the Joint Director (Chemicals). Learned counsel further contends that the promotion was given on the basis of the seniority and vacancy position. The petitioner will be considered when her turn comes as per seniority. As such, the order impugned in this writ petition is issued by following the rules, as the petitioner is not entitled for the claim made in the said representation and accordingly, sought to dismiss the writ petition.

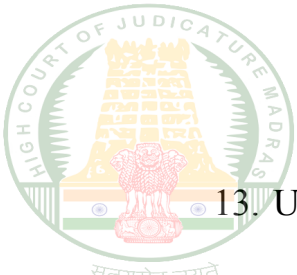
10. The facts are not in dispute. The main issue to be considered in this writ petition is whether, the petitioner is entitled for promotion to the next post or not on par with her juniors who are already promoted and retired.

11. On perusal of the impugned order, it appears that as stated by the petitioner, one Chinnathambi who was appointed as Unskilled Worker on permanent basis from 28.06.1996, is not junior to the petitioner. As the petitioner was dismissed from service once and joined again on 27.08.1996, the other employees Kannaiyan, Paramasivam and Rajendran have been continuously working from 01.04.1979,



01.04.1979, 01.04.1979 and 06.08.1997 respectively. Since these three employees are seniors than the petitioners, considering the date of their appointment, this Court is of the opinion that the petitioner cannot contend that she is senior to those persons who are already promoted.

12. But it is stated in the impugned order that the promotions are given only to those who have gained seniority before than the petitioner and no promotion was given to anyone younger than the petitioner and currently the vacant posts claimed by the petitioner are not filled due to administrative reasons. However, it is informed to the petitioner through the impugned order that when those posts are filled in future, the petitioner will be considered for promotion based on her seniority and merit. This impugned order passed on 28.04.2017 i.e., 7 years back. To ascertain the fact that, whether those vacant posts which were not filled due to administrative reasons, as mentioned in the impugned order, are filled subsequently or not, this Court directed the learned Additional Government Pleader for respondents to get status of the vacant post lying in the department. But even after granting sufficient time, the status of the vacant post for which the petitioner is claiming for promotion, is not placed before this Court.



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13. Under these circumstances, this Court left with no other option except to direct the respondents to examine the case of the petitioner and promote her to the next higher post, in the vacant post available in the department, as on 28.04.2017 and regularise her service with effect from that date with all monetary benefits to meet the interest of justice.

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

i) The order issued by the fourth respondent in Na.Ka.No.67/A/2016 dated 28.04.2017 is hereby quashed.

ii) The respondents are directed to promote the petitioner as Skilled Worker Grade-II with effect from the date she become eligible for promotion and regularise her service with all monetary benefits, within a period of eight weeks from the date of receipt of copy of this order.

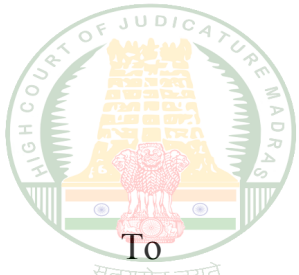
15. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

28.01.2025

Index :Yes/No

Neutral Citation :Yes/No

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