

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.NO.10053 OF 2015

S.Parameswari

... Petitioner

Versus

1.Director of Public Health and
Preventive Medicine
Chennai - 600 006.

2.Deputy Director of Health Service
Dharapuram.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent herein in his proceedings R.No.102487/E4/2014/S3 dated 13.12.2014 and quash the same and consequently direct the respondents herein to provide appointment to the petitioner on compassionate grounds, within a time frame.

For Petitioner : Mrs.Daisy
for M/s.G.Bala and Daisy

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

O R D E R

Heard both sides. By consent, the writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner's husband was appointed as Sweeper in Government Primary Health Centre, Vellakoil, Erode District. He

died on 01.06.2011, while he was in service, within a period of three years from the date of his joining duty. The petitioner became widow at the young age of 28 years. She has two minor children aged below 10 years at the time of death of her husband and she has to maintain herself and also the minor children after the death of her husband. The petitioner passed B.Com. She is eligible for compassionate appointment to the post of Junior Assistant. However, due to her poverty, she made representation to give her any employment including the work of a Sanitary Worker, which her husband did at the time of death.

3.The second respondent forwarded a proposal dated 29.09.2011 to the first respondent recommending the case of the petitioner for compassionate appointment.

4.Since no order was passed on the aforesaid proposal, the petitioner filed writ petition in W.P.No.29073 of 2014 seeking to pass orders on the aforesaid proposal dated 29.09.2011 of the second respondent. This Court, disposed of the writ petition on 07.11.2014 with a direction to the respondents to pass orders on the proposal, within a period of eight weeks from the date of receipt of a copy of the said order.

5.Now, the first respondent rejected the proposal of the second respondent as well as the request of the petitioner in the impugned order dated 13.12.2014. This writ petition is to quash the impugned order dated 13.12.2014 of the first respondent.

6.The impugned order proceeds that since the petitioner has possessed qualification for the post of Junior Assistant / Typist, she could not be posted as Sanitary Worker. The impugned order proceeds erroneously, as if the petitioner wanted the post of Sanitary Worker. She cried for any post, including the post of Sanitary Worker.

7.In this regard, it is relevant to extract the following passage in para 3 (v) in the affidavit filed in support of the writ petition, as follows:

".... The impugned order has been passed only on the ground that, she is eligible for appointment to the post of Junior Assistant / Typist. But, she had requested for any employment assistance including Hospital worker or sanitary worker. The fact remains that, though the petitioner is a graduate, she is willing to take up any employment assistance by the Government consequent to the demise of her husband....."

8.The reliance placed on by the respondents on G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989 to deprive the claim of the petitioner is totally misconceived. The relevant passage in G.O.Ms.No.1499, as extracted in the impugned order, is extracted hereunder:

"..... the appointing authorities under no circumstances should appoint a dependant to a lower post when the dependant possess the qualifications required for the post of Junior Assistant / Typist."

9.The said Government Order provides guidelines that the Department could not provide compassionate appointment to the dependant of the Government servant to a lower post, when the dependant possess the qualification required for the post of Junior Assistant / Typist. This cannot be read as to mean that it is a disqualification for appointing the petitioner to the post of Sanitary Worker. In fact, after being appointed to the post of Sanitary Worker in the vacancy, the petitioner shall be provided appointment to the post of Junior Assistant as and when the vacancy arises. If the post of Junior Assistant is vacant, the petitioner shall be appointed in the post of Junior Assistant.

10.Hence, the impugned order dated 13.12.2014 of the first respondent is liable to be quashed and accordingly, the same is quashed and the first respondent is directed to provide compassionate appointment to the petitioner either as Junior Assistant or Sanitary Worker forthwith. The petitioner shall be appointed as Junior Assistant as and when the vacancy arises, if she is appointed as Sanitary Worker.

11.The writ petition is disposed of in the above terms.
No costs.

सत्यमेव जयते

Sd/-

Asst.Registrar (CO)

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/true copy/

Sub Asst. Registrar

TK

To

1. Director of Public Health and
Preventive Medicine
Chennai - 600 006.

2. Deputy Director of Health Service
Dharapuram.

1 cc to M/s.G. Bala & Daisy, Advocate, Sr. 19077
1 cc to Government Pleader, Sr. 19249

W.P.NO.10053 OF 2015

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