

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :24.02.2016

Delivered on : 08.03.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.41074 of 2015

M.Farthima

... Petitioner

V.

1.The Registrar,
High Court, High Court Buildings,
Chennai - 600 104.

2.The Principal District & Sessions Judge,
Erode District, Erode - 638 011.

3.The Judicial Magistrate No.1,
Erode District, Erode - 638 011.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Certiorari after calling for the concerned records relating to the order A.No.550/2014, dated 24.11.2015 passed by the 2nd respondent and quash the same and direct the 2nd respondent to appoint the petitioner on compassionate grounds in any suitable post to which she is eligible and found suitable on the basis of the petitioner representation dated 27.10.2015.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.R.Tholgappian

ORDER

M.VENUGOPAL, J.

The Petitioner has focussed the present Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the order in A.No.550/2014 dated 24.11.2015 passed by the 2nd Respondent/Principal District and Sessions Judge, Erode and to quash the same. Further, she has also sought for passing of an order by this Court in directing the 2nd Respondent to appoint her on compassionate grounds in any

suitable post to which she is eligible and found suitable on the basis of a representation dated 27.10.2015.

2. According to the Petitioner, she belongs to Islam and her husband belongs to Hindu, scheduled caste community and they were married on 04.12.2001. In fact, her marriage was an intercaste and inter religious one. Her husband S.Thangadurai (since deceased) joined in the Criminal Judicial Department on 26.05.2010 by means of an appointment order issued by the Chief Judicial Magistrate, Erode on a temporary basis. He was sponsored by the District Employment Office, Erode and lastly, he served as an Office Assistant in the Court of Judicial Magistrate No.1, Erode (3rd Respondent) and he expired on 01.11.2013 due to Jaundice while he was in service. The Petitioner has two children, who were studying at Erode. She is a house wife and lives with her aged parents at Erode. Her aged father is a Tailor and he will get meagre income only and has no other source. Further, she had studied upto 12th Standard and also Diploma in Co-operative Management (DCM) and Diploma in Computer Application.

3. The case of the Petitioner is that she had already submitted her application during the month of November 2013 making a request to appoint her in any one of the posts in the Court on 'Compassionate Ground'. Also that, her mother-in-law had given No Objection for granting Compassionate appointment to her. She had also not received any terminal benefits consequent on the death of her husband and her family is in indigent circumstances. There is no breadwinner in the family. Since the Petitioner had not received any reply to a representation dated 06.11.2013, she had submitted another application in the proper format on 06.11.2013 enclosing all her relevant certificates. As such, on 23.06.2015 she sent an application to all the Respondents seeking Compassionate Ground appointment. The grievance of the Petitioner is that the Respondents had not considered her application dated 06.11.2013, 10.12.2014 and 23.06.2015.

4. The Learned Counsel for the Petitioner submits that the Petitioner's husband (since deceased) was a regular Government Servant appointed against a regular post of Night Watchman by the 3rd Respondent (sponsored by the District Employment Exchange, Erode vide letter bearing No.A6/X2.64 and W/3/2010 dated 14.05.2010) and the appointment was a regular appointment satisfying the service rules duly made by the appointing authority and therefore, his appointment cannot be characterised as 'Ad hoc' or 'Temporary'.

5. The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner on 08.08.2015 had given up her appointment as Sales Woman in the Ration Shop and the

salary arrears of Rs.22,620/- was credited into her account only on 20.08.2015 and on 08.09.2015 a sum of Rs.9,057/- was credited in her account. Furthermore, only on 01.09.2015 a letter was addressed to the 3rd Respondent to settle her 'Family Benefits Fund' and the salary for the period from 2011 to 2013 was directed to be paid within one week.

6.The Learned Counsel for the Petitioner projects an argument that the Tahsildar of Erode had issued a certificate dated 12.03.2015 stating that there is no movable or immovable property and that the Petitioner was not remarried and the annual income is only Rs.48,000/- and that the family is in indigent circumstances and that her husband left behind herself, son, daughter and mother as Legal Heirs.

7.The Learned Counsel for the Petitioner strenuously takes a plea that the Petitioner continues to be under indigent circumstances and her case falls within the scheme of 'Compassionate Appointment' as per G.O.Ms.No.42 dated 12.03.2007. It is also brought to the notice of this Court that the Petitioner, on earlier occasion, filed W.P.No.23992 of 2015 before this Court and the same was disposed of on 15.09.2015 and this Court had inter alia observed at paragraph 3 as follows:

"3.Without going into the merits of the case, the Principal District & Sessions Judge, Erode District/second respondent is directed to consider the case of the petitioner afresh on the basis of the present social status, financial status and other relevant requirements for grant of appointment on compassionate ground and pass an appropriate order, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order."

8.The Learned Counsel for the Petitioner contends that the impugned order dated 24.11.2015 passed by the Learned Principal District and Sessions Judge, Erode District is not correct for the simple reason that the Petitioner takes care of her family and further, the Tahsildar, Erode had submitted a report stating that her family was an indigent circumstances etc. and also that there is no impediment in granting the compassionate appointment. Unfortunately, these vital aspects were not taken into account by the 2nd Respondent/Principal District and Sessions Judge, Erode at the time of passing the impugned order of rejection. Therefore, the impugned order dated 24.11.2015 is liable to be set aside, in the interest of Justice.

9.The prime contention projected on the side of the Petitioner is that the Petitioner's husband (since deceased) served as an Office Assistant in the Judicial Magistrate Court No.1, Erode for 3 ½ years and expired on 01.11.2013 while he was in service.

10.In response, the Learned Counsel for the Respondents submits that the 2nd Respondent/Principal District and Sessions Judge, Erode had not received any application dated 06.11.2013 and 10.11.2014 from the Petitioner, since the post of Chief Judicial Magistrate, Erode was vacant from 10.12.2014 onwards and therefore, no orders could be passed on the applications dated 20.11.2014 and 23.06.2015.

11.The Learned Counsel for the Respondents contends that the Writ Petitioner's husband (S.Thangadurai) was appointed temporarily as Night Watchman vide proceedings of the Chief Judicial Magistrate, Erode in Application No.67/2010 dated 26.05.2010 and he joined duty on the forenoon of 31.05.2010 as per the list of 5 candidates sponsored by the District Employment Officer, Erode in letter No.A6/ X2/64 & W18/2010 dated 14.05.2010. Moreover, the Petitioner's husband worked as Masalchi-cum-Night Watchman for the period from 31.05.2010 to 31.07.2011 at Chief Judicial Magistrate Court, Erode and further that, no salary is due or pending payable in the Chief Judicial Magistrate Court, Erode.

12.According to the Learned Counsel for the Respondents, though the Petitioner's husband S.Thangadurai (deceased) was appointed in the regular post of Night Watchman, yet, he was appointed only temporarily as Night Watchman and continued to be employed only temporarily in the post of 'Night Watchman' till his date of death i.e. 01.11.2013. Also that, his regularisation of service was withheld in view of the pendency of the disciplinary proceedings against him relating to the continuous unauthorised absence from 01.08.2011 to 15.05.2012 (while he was in employment in the Court of Judicial Magistrate, Fast Track Court No.1 (Ministerial level)) and there is no salary due or pending to be paid to the Petitioner's deceased husband in that Court.

13.Proceeding further, the Learned Counsel for the Respondents brings it to the notice of this Court that the Petitioner's deceased husband S.Thangadurai was transferred as Masalchi cum Night Watchman at Judicial Magistrate Court, Bhavani as per the proceedings of the Chief Judicial Magistrate, Erode in A.No.123/2012 dated 07.05.2012 and he joined duty on the forenoon of 16.05.2012 and served in the Court of Judicial Magistrate Court, Bhavani from 16.05.2012 to 20.12.2012. At that point of time, without intimation the Petitioner's husband had absented from attending duty for the

period from 01.06.2012 to 31.10.2012 (for 153 days) which was treated as on leave on loss of pay. Moreover, no salary is due or pending in Judicial Magistrate Court, Bhavani as well.

14. Apart from the above, the Petitioner's husband (during his lifetime) was transferred as Masalchi cum Night Watchman to the Judicial Magistrate Court No.1, Erode in terms of proceedings of Chief Judicial Magistrate, Erode dated 19.12.2012 and he joined duty on the afternoon of 20.12.2012. In this Court also, he had absented from duty for a period of 282 days beginning from 03.01.2013 to 31.10.2013 and in short, he was irregular in attending Office and due to his unauthorised absence on loss of pay, his regularisation was withheld as per proceedings of Chief Judicial Magistrate, Erode dated 21.01.2013. However, he died on 01.11.2013 while he was in service.

15. The Learned Counsel for the Respondents submits that as per G.O.Ms.No.42, Labour and Employment Department dated 12.03.2007 a compassionate ground appointment/employment can be claimed due to the death of regular employee alone and in this connection, a reference is made to the relevant portion of the aforesaid G.O. which runs as under:

"Dependants of only regular Government servant who died in harness shall be given appointment of compassionate grounds. No appointment on compassionate grounds shall be given to Dependants of casual or adhoc or temporary government servants appointed under rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules."

16. The version of the Respondents is that the Petitioner's husband from the date of his entry into the service from 31.05.2010 till his date of death on 01.11.2013 had unauthorisedly absented himself for 14 times for a total period of more than one year and in fact, the punishment of censure was passed by the Learned Chief Judicial Magistrate (Fast Track Court No.1), Erode dated 14.09.2011. Further, the disciplinary proceedings initiated by the Learned Chief Judicial Magistrate (Fast Track Court No.1), Erode dated 02.03.2012 and Judicial Magistrate No.1, Erode dated 17.01.2013 were pending, as a result thereof his regularisation of service was withheld as per proceedings of the Chief Judicial Magistrate, Erode dated 21.01.2013.

17. The primordial plea of the Respondents is that the Petitioner's husband (since deceased) was appointed only temporarily and his service was not regularised on account of the pending disciplinary proceedings initiated against him and as such, his service was to be treated only as 'Ad hoc' or 'Temporary' and taking into consideration of all relevant facts

like social, financial status and other legal requirements, the 2nd Respondent/Principal District and Sessions Judge, Erode had rejected the application of the Petitioner dated 24.11.2015.

18. In pith and substance, the stand of the Respondents is that the Writ Petitioner was already in employment on regular basis till 08.08.2015, even during the life time of her deceased husband and even after she had applied for the post on compassionate ground on 23.06.2015, her financial status was good and not a bad one and since the Petitioner has not come to the Court with clean hands, the Writ Petition is liable to be dismissed.

19. It is to be noted that the term 'Compassionate' points out that a deep feeling of pity for the suffering of another and an inclination to render assistance either to shower mercy or to support. As a matter of fact, the word 'Compassionate' is defined in Concise Oxford Dictionary as 'Sympathetic; pitying'. The term 'Compassion' is defined as 'pity including one to help or be merciful'. A 'Compassionate Appointment' is made when a breadwinner of a family is not available to look after the family on account of his untimely death. The method of Compassionate Appointment is resorted to with a view to ensure that the members of the family of the deceased employee are out of financial crisis and distress. Indeed, 'Compassionate Appointment' is an exception to the general rule that recruitment to public services should be on the basis of merit, by open invitation providing equal opportunity to all eligible individuals to participate in selection process, as per decision of the Hon'ble Supreme Court in State Bank of India V. Raj Kumar, (2010) 11 SCC 661. It is to be remembered that a 'Compassionate Appointment' must be made bearing in mind the ingredients of the Articles 14 and 16 of the Constitution of India.

20. It cannot be forgotten that the object of the Compassionate Appointment is to render social Justice. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in Angad Das V. Union of India reported in (2010) 3 SCC 463 wherein it was observed that 'Senior officials should not be totally oblivious of problems of humble and modest employees and pass harsh orders'.

21. Moreover, the appointment on compassionate ground cannot be claimed as a matter of right but can be claimed only in terms of the Rules or Regulations framed in this regard, as per decision in Vijaya Ukarda Athor (Athawale) V. State of Maharashtra reported in (2015) 3 SCC 399. An application for a compassionate appointment can be considered where the deceased employee left the family in penury or without any means of livelihood. As such, the financial condition of the deceased

employee's family is an impotent criterion for eligibility of a dependent of the deceased.

22.Also, in the decision *Susheela B.Bhakta V. Karnataka State Road Transport Corporation*, (1995) 3 SCT 382 (Kant.), it is held that it is the duty of the authorities to hold an appropriate enquiry as to whether the family can sustain itself. If it is found that the bereaved family is not in position to tide over the crisis, then compassionate appointment should be given. Insofar as the concept of 'Compassionate Appointment' is concerned, 'Time is the essence'.

23.At this juncture, this Court aptly points out the decision of the Hon'ble Supreme Court in *Balbir Kaur and another V. Steel Authority of India Limited and others*, 2000 Supreme Court Cases (L&S) 767 at special page 768, wherein it is held as follows:

"SAIL is an "authority" within the meaning of Article 12 of the Constitution. It has an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but SAIL has not acted in the present case as it ought to have acted. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. Law courts cannot be mute spectators where relief is denied to the horrendous sufferings of an employee's family on account of death of the breadwinner. Constitutional philosophy should be allowed to become a part of every man's life in this country and then only the Constitution can reach everyone and the ideals of the Constitution-framers would be achieved since the people would be nearer the goal set by the Constitution. This is an ideal situation which is presently a far cry."

24.Further, in the decision of the Hon'ble Supreme Court in *Dhalla Ram V. Union of India and others*, AIR 1999 Supreme Court 564, it is observed as follows:

"The appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution."

25.Moreover, in the decision of the Hon'ble Supreme Court in *Andhra Pradesh State Road Transport Corporation and another*

V. Dannina Rajeswari, 1999 Supreme Court Cases (L&S) 1182, it is observed that 'Compassionate Appointment' can be directed to be given only in a clear vacancy'.

26. Besides the above, in the decision of the Hon'ble Supreme Court in Govind Prakash Verma V. Life Insurance Corporation of India and others, (2005) 10 Supreme Court Cases 289, at special page 291, wherein at paragraph 6, it is, inter alia, observed and held that '.... The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.'

27. Also, in the decision Saroj V. State of Haryana, (1997) 1 SCT 229, the facts are that the widow of a deceased ad hoc employee was seeking appointment on compassionate grounds. This was denied on the ground that the compassionate appointment can be granted only in the case of death of an employee who is working on regular basis. The argument raised that as the deceased had worked for more than two years and was entitled to regularisation was taken note of and ultimately directions were issued to consider the case of the aggrieved person on compassionate grounds.

28. Ordinarily, if a Casual Labour with temporary status was not regularised for sheer inaction, the presumption is that he was a regular employee before his premature death and an administration cannot deprive his widow the benefits of family pension. Likewise, where there is no reason for indefinitely

continuing to engage an employee as ad hoc or casual, the family of deceased employee could not be denied the consideration for compassionate appointment and an employer ought not to enjoy the fruits of his inaction or lethargy.

29.As far as the present case is concerned, the Petitioner's husband S.Thangadurai, S/o.N.Subbaiyan (Registration No.1991 N 8043) was sponsored by the District Employment Officer, Erode and was temporarily appointed as Night Watchman and posted as temporary Night Watchman in the Court of Chief Judicial Magistrate, Erode in the existing vacancy caused due to the transfer of one D.Elango, as seen from the proceedings of the Chief Judicial Magistrate, Erode dated 26.05.2010.

30.There is no two opinion of the fact that the Petitioner's husband had entered into service as Night Watchman on 31.05.2010 and he expired on 01.11.2013. According to the Respondents, till his death, he unauthorisedly absented for 14 times, for a total period of more than one year and since he was appointed only temporarily, his service was not regularised on account of the pending disciplinary proceedings initiated against him. In this connection, the 2nd Respondent/Principal District and Sessions Judge, Erode, in the counter to W.P.No.41074 of 2015 (filed on behalf of the 3rd Respondent), at paragraph 14, had, among other things, observed that the Petitioner's husband's appointment as Night Watchman was temporary and his service was not regularised on account of pending disciplinary proceedings initiated against him, his service was to be treated only as ad hoc or temporary.

31.The crystalline stand of the Petitioner (wife of the deceased) is that her Late husband's appointment was a regular appointment satisfying the service rules duly made by the appointing authority and there was no infirmity in regard to the selection and appointment of her husband. As such, her husband's appointment cannot be characterised as an ad hoc or temporary one, as opined by this Court. Viewed in that perspective, the contra view taken by the 2nd Respondent/Principal District and Sessions Judge, Erode in the impugned order dated 24.11.2015 in A.No.550/2014 is not correct in the eye of Law and the same is set aside by this Court, in furtherance of substantial cause of Justice.

32.Besides the above, this Court very relevantly points out that even the integrated Revenue Tahsildar, Erode Certificate dated 12.03.2015 issued in favour of the Petitioner (for securing Compassionate Appointment) inter alia mentions that after the death of the Petitioner's husband Thangadurai, the family is in 'indigent circumstances'. Indeed, non-regularisation of the Petitioner's Husband's services owing to

the pendency of disciplinary proceedings may not be an impediment for the 2nd Respondent/Principal District and Sessions Judge, Erode to consider the representation of the Petitioner dated 23.06.2015, inasmuch as for finalisation of disciplinary proceedings, no fault was attributed on the part of the Petitioner's husband (during his lifetime).

33. On a careful consideration of respective contentions and this Court taking note of a primordial fact that the Petitioner's husband (since deceased) entered into service on 31.05.2010 and expired on 01.11.2013 and also notwithstanding the fact he was reportedly unauthorisedly absent (for 14 times) for more than one year, yet, this Court is of the considered view that his appointment as temporary Night Watchman was against a regular post of Night Watchman in a clear vacancy (his name being sponsored by the District Employment Exchange, Erode vide letter No.A6/X2/64 and W/3/2010 dated 14.05.2010) cannot be termed as ad hoc or temporary one in stricto sense of the term (notwithstanding the fact that the Petitioner's husband's services were not regularised on account of pending disciplinary proceedings while he was in service). Inasmuch as this Court, in the present Writ Petition, has set aside the impugned order dated 24.11.2015 passed by the 2nd Respondent and also taking note of the fact that the Petitioner was an erstwhile Sales Woman in a Co-operative Department and later admittedly resigned her job on 08.08.2015, this Court, in the interest of Justice, Fair Play and Equity, directs the 2nd Respondent/Principal District and Sessions Judge, Erode to consider the representation of the Petitioner dated 23.6.2015 (seeking compassionate appointment) afresh in a dispassionate manner and to pass a speaking order (of course by outlining a process of reasoning in qualitative and quantitative terms) on merits by taking into account the present social, financial status, other relevant documents/requirements and subsequent developments (viz., the factum of Petitioner resigning her job as Sales Woman in Co-operative Department on 08.08.2015), uninfluenced and untrammelled with any of the observations made by this Court in this order, within a period of six weeks from the date of receipt of a copy of this order.

34. With the aforesaid observation and direction, the Writ Petition stands disposed of. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sgl

To

- 1.The Registrar General
High Court, High Court Buildings,
Chennai - 600 104.
- 2.The Principal District & Sessions Judge,
Erode District, Erode - 638 011.
- 3.The Judicial Magistrate No.1,
Erode District, Erode - 638 011.

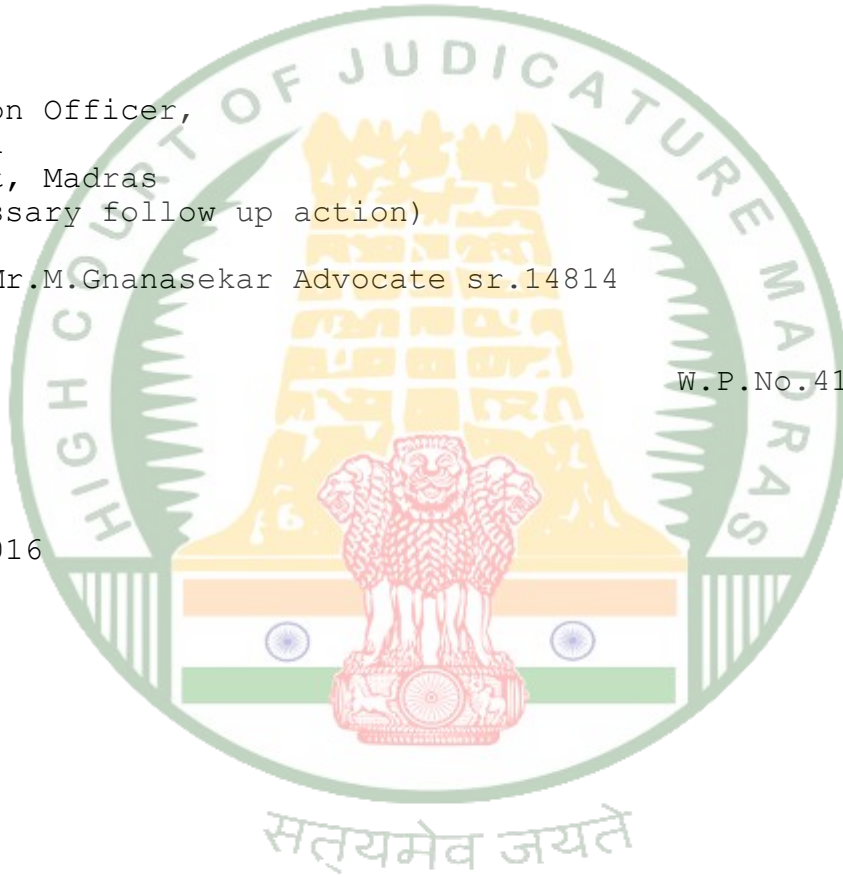
Copy to:

The Section Officer,
Legal Cell
High Court, Madras
(for necessary follow up action)

+1 cc to Mr.M.Ghanasekar Advocate sr.14814

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