

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

W.A.No.1062/2017 and CMP.No.14882 of 2017

1. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai-9.
2. The Director,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-15.
3. The District Collector,
Dharmapuri District. Appellants/Respondents 1 to 3

Vs

1. M.Karuppan
2. The Project Director-cum-Member Secretary,
Rural Development Agency,
Dharmapuri, Dharmapuri District. Respondents/Petitioner and 4th
Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 05.06.2017 made in W.P.No.8393/2017 by a learned Single Judge.

Prayer in W.P.No.8393 of 2017:

Petition filed under Article 226 of the constitution of India praying for a Writ of certiorarified Mandamus calling for the records of the second respondent in Na.Ka. No.5519 /2017 / F-1 dated 01.03.2017 and quash the same and consequently direct the respondents to regularize the services of the petitioners deceased father M.Mari in the post of Office Assistant from the initial date of appointment with all consequential monetary pensionary and service benefits as was done for identically situated individuals as per G.O.Ms. No.57 dated 20.06.2013 and

G.O.Ms. No.100 dated 02.09.2016 and consequently consider and appoint the petitioner on compassionate grounds in any of the posts which is commensurate with his educational qualifications.

For Appellants :: Mr.V.Jayaprakash Narayanan,
Special Government Pleader

For 1st Respondent :: Mrs.Dakshayani Reddy

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 05.06.2017 made in W.P.No.8393/2017 by a learned Single Judge.

2. The Writ Petition has been filed by the petitioner seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Na.Ka.No.5519/2017/F1, dated 01.03.2017 and quash the same and consequently, direct the respondents to regularize the services of the petitioner's deceased father, M.Mari in the post of Office Assistant from the initial date of appointment with all consequential monetary, pensionary and service benefits as was done for identically situated individuals as per G.O.Ms.No.57 dated 20.06.2013 and G.O.Ms.No.100 dated 02.09.2016 and consequently consider and appoint the petitioner on compassionate grounds in any of the posts which is commensurate with his educational qualifications.

3. The petitioner's father was originally appointed in the Revenue Department on 08.10.1971 through the Employment Exchange as Masalchi. Subsequently, vide proceedings issued by the Personal Assistant to the Collector, Dharmapuri District dated 14.09.1972, the petitioner's father was appointed as Watchman and subsequently, he was observed as Office Assistant by another proceedings dated 26.02.1977. After his absorption, he was relieved from the District Development Corporation Limited vide proceedings dated 28.04.2003 and thereafter, he continued to work in the District Rural Development Agency under the control of the third respondent.

4. It is pleaded that the petitioner's father died on 07.05.2003, while working in the Dharmapuri District Development Agency leaving behind the petitioner and his family under financial crisis. Therefore, the petitioner has given a representation dated 26.04.2004, to the third respondent seeking for compassionate appointment. The third respondent-District Collector, Dharmapuri, herein sent a reply dated 04.05.2004, to the petitioner's application stating that there is a ban on all compassionate appointment. Therefore, the petitioner's request

for compassionate appointment cannot be considered. Thereafter, the petitioner was patiently waiting for lifting the ban and subsequently, vide proceedings dated 08.08.2006, the Project Director- fourth respondent in the Writ Petition had recommended to the second respondent herein recommending the petitioner's name to be included in the list of dependents maintained for appointment on compassionate grounds.

5. It is the contention of the learned Special Government Pleader appearing for the appellants that when the petitioner's father was not a permanent member of the Government service as his sad demise took place on 07.05.2003, cannot confer any benefit to the petitioner for compassionate appointment, for the simple reason that on 07.05.2003, the services of his father was not regularised. Therefore, the benefit of compassionate appointment can be given only to Dependents who are the legal heirs of the deceased, if the deceased service was regularised and a permanent staff.

6. The learned counsel for the writ petitioner/1st respondent submitted that when the petitioner's father was originally appointed on 08.10.1971 and subsequently he was promoted to the post of Office Assistant vide proceedings dated 26.02.1977 and moreover, by one another proceedings dated 22.04.2003, the petitioner's father was also absorbed in the vacant post of Office Assistant in the District Development Agency, Dharmapuri the non-regularisation of the service of the petitioner's father cannot be put against the petitioner. In any event, when the petitioner's father, while serving in the third respondent-Department, unfortunately died, the respondents cannot deny that the petitioner is not entitled to get the benefit of compassionate appointment. Whether the employment was regularised or not, regularisation cannot be a criteria for rejecting the benefit of compassionate appointment, if the deceased died while in service leaving behind the family .

7. Considered the submissions made on either side and We have also carefully gone through the materials placed on record.

8. Though, it is the contention of the learned Special Government Pleader appearing for the appellants that when the writ petitioner's father was not a permanent member of the Government service as his sad demise took place on 07.05.2003, cannot confer any benefit to the petitioner for compassionate appointment, for the simple reason that on 07.05.2003, the services of his father was not regularised, in an identical situation in G.Ashokan vs. The District Collector, Tiruvannamalai District, Tiruvannamalai and another in W.P.No.413/2013 dated 22.04.2014, a Division Bench of this Court has set aside the dismissal order of the Single Judge by

citing that existence of the particular post from 8.10.1986 for about 25 years is proved by the conduct of the respondents in allowing the petitioner therein to continue in service. The Division Bench of this Court has also cited a decision of the Hon'ble Apex Court in State of Jharkand v. Jitendra Kumar Srivastava reported in AIR 2013 SC 3383 in which it has been held that it is the settled proposition of law that right to get actual salary/leave salary and retirement benefits are right to property as per Article 300 A of the Constitution of India. Such benefits cannot be deprived to person or legal heirs, who are eligible to receive the same. In the instant case also, the appellants have held that there is no such regularisation as on the date of the death of the father of the writ petitioner. But, according to the 1st respondent herein/Writ Petitioner, a Government Order in G.O.Ms.No.57 dated 20.06.2013 has been issued for regularising the services of those who were absorbed in the Rural Development and Panchayat Raj Department and in that process, several other persons have been absorbed. The petitioner's father is also identically placed like those candidates who were absorbed vide G.O.Ms.No.57 dated 20.06.2013. Further, the petitioner's father was originally appointed as Masalchi on 8.10.1971 and subsequently, he was promoted to the post of Office Assistant vide proceedings dated 26.02.1977 and by proceedings dated 22.04.2003, the petitioner's father was also absorbed in the vacant post of Office Assistant in the District Development Agency, Dharmapuri. The petitioner's father has worked in that capacity for a long time and thereafter, on account of closure of the District Rural Development Agency, he was absorbed as a Government Employee and before regularising his services, he died.

9. Therefore, taking analogy of the decision of the Apex Court in the State of Jharkand v. Jitendra Kumar Srivastava reported in AIR 2013 SC 3383, we are of the view that when the single Judge has not committed error in directing the Government Department to extend the benefit of compassionate appointment to the petitioner, it is for the appellant Government to consider the case of the 1st respondent and appoint him on compassionate ground within a period of three months from the date of receipt of a copy of this Order.

10. With the above direction, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

tsi

To

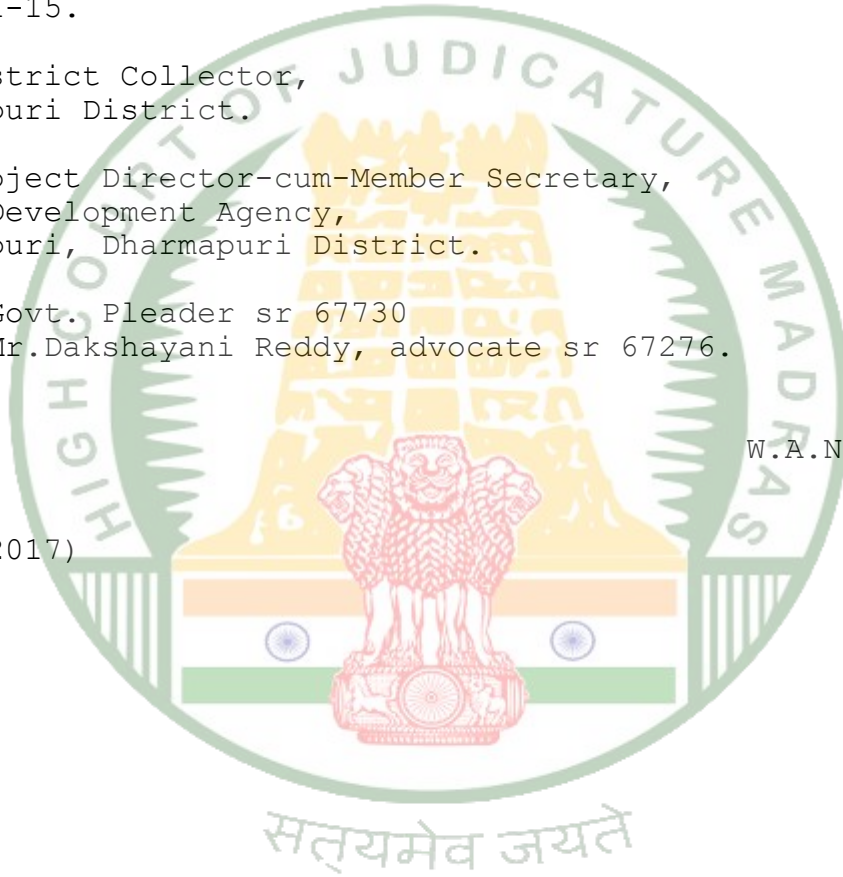
1. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai-9.
2. The Director,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-15.
3. The District Collector,
Dharmapuri District.
4. The Project Director-cum-Member Secretary,
Rural Development Agency,
Dharmapuri, Dharmapuri District.

+1 Cc to Govt. Pleader sr 67730

+1 Cc to Mr.Dakshayani Reddy, advocate sr 67276.

W.A.No.1062/2017

KJI (CO)
sp(27/09/2017)



WEB COPY