

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.06.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.8393 of 2017
and WMP.No.9174 of 2017

M.Kuruppan

.. Petitioner

Vs

1. The Secretary to Government ,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director.
Rural Development and Panchayat Raj Department,
Panakal Building,
Saidapet,
Chennai - 600 015.
- 3.The District Collector
Dharmapuri District.
4. The Project Director cum Member Secretary,
Rural Development Agency,
Dharmapuri,
Dharmapuri District.

.. Respondents

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/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.

For Petitioner : Mr.Dakshayani Reddy
For Respondents: Mr.V.Jayaprakash Narayanan
Special Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking a 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.

2. 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.

3. 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 herein had recommended to the second respondent herein recommending the petitioner's name to be included in the list of dependants maintained for appointment on compassionate grounds.

4. The learned counsel for the petitioner would submit that the fourth respondent again recommended vide letter dated 07.12.2006 for inclusion of the petitioner's name in the Rural Development and Panchayat Raj Department. In the meanwhile, the Government also issued G.O.Ms.No.57 dated 20.06.2013 regularising the services of those who were absorbed in the Rural Development and Panchayat Raj Department with effect from their initial date of appointment. Since the petitioner's father is also identically placed like those candidates who were absorbed vide G.O.Ms.No.57, dated 20.06.2013 and if his father was alive, he would have also reaped the benefits of G.O.Ms.No.57. Finally, the second respondent has rejected the claim of the petitioner on the ground that his father was not regularised before he died. On this ground, the respondents rejected the petitioner's claim for the benefit of compassionate appointment.

5. The learned counsel for the petitioner further 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 deceased 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.

6. The learned Additional Government Pleader, who is appearing for the third respondent, taking a stand from the draft counter affidavit filed by the third respondent-District Collector, submitted 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, his father was not regularised. Therefore, the benefit of compassionate appointment can be given only to dependants who are the legal heirs of the deceased, if the deceased was regularised and a permanent staff.

7. This issue has been repeatedly settled by this Court. It is useful to refer to the Judgement of this Court in W.A.No.413 of 2013 dated 22.04.2014 which reads as follows:

18. The appellant's father though appointed as basic servant temporarily at the age of 36 years, he was paid Rs.60/- per month initially, which was periodically increased and lastly he received Rs.620/- per month till his completion of 60 years of age i.e., upto 31.03.2010. Even though he was also appointed after 01.04.1981, the Government having chosen to regularise more than 381 persons appointed after 01.04.1981 through two Government orders on their completion of ten years of service, appellant's father ought to have been granted regularisation of service from 1996 as he joined in service on 08.10.1986. The appellant's father was paid salary less than the minimum wages fixed by the Government through the District Collector, right from 08.10.1986 till 31.03.2010. Thus, the appellant's father was discriminated not only due to non-regularisation, but also by not paying minimum wages for about 25 years. In spite of the Government order issued in G.O.Ms.No.22 P & AR Department dated 28.02.2006 ordering to regularise the contingent staff in all departments who have completed ten years of service as on 01.01.2006, still his service was not regularised. The existence of the post from 08.10.1986 for about 25 years is proved by the conduct of the respondent in allowing him to continue in service. In view of all these facts coupled with the Judgment of the Supreme Court cited supra, this Court is firmly of the view that this case deserves to be allowed partly.

सत्यमेव जयते

8. In the light of above, the objection raised by the respondent that the petitioner father's service has not been regularised on 07.05.2003 and hence, the benefit of compassionate appointment is hereby over ruled, shall be liable to be set aside.

9. Hence, this writ petition stands allowed. The impugned order of the second respondent dated in Na.Ka.No.5519/2017/F1 dated 01.03.2017 is hereby set aside. The second respondent is directed to issue appointment order, if he is eligible, subject to educational qualification, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Secretary to Government ,
Rural Development and Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director.
Rural Development and Panchayat Raj Department,
Panakal Building,
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Chennai - 600 0153.
- 3.The District Collector
Dharmapuri District.
4. The Project Director cum Member Secretary,
Rural Development Agency,
Dharmapuri,
Dharmapuri District.

+1 cc to Government Pleader sr 40038

+1 cc to M/s.Dakshyani Reddy Advocate sr 40271

W.P.No.8393 of 2017
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aa21/06/2017