

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1207 of 2015

&

M.P.No.2 of 2015

T.Jothimalar

... Petitioner

-Vs-

1. The Principal District Judge
Cuddalore District
Cuddalore.
2. The Secretary to Government
Home (Courts-V) Department
Fort St.George
Chennai 9.
3. The Registrar General
High Court of Madras
Chennai 104.

... Respondents

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the respondents in connection with the impugned order passed by the first respondent in A.No.11/2015 dated 08.01.2015 and quash the same and further direct the respondents to regularise the services of the petitioner from the date of the initial appointment with all consequential service and monetary benefits.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.V.Vijay Shankar - R1 & R3

Mr.P.S.Siva Shanmuga Sundaram -R2
Special Government Pleader

O R D E R

NOOTY.RAMAMOHANA RAO, J.

The writ petitioner presently working as a Junior Assistant in the Court of Chief Judicial Magistrate, Cuddalore, called in question the legality and correctness of the order passed on 08.01.2015, by the learned Principal District Judge, Cuddalore District, declining to consider the regularisation of the services of the writ petitioner.

2.The facts of the case are lying in a very narrow compass and they are also, fortunately not in serious dispute.

(i) The father of the writ petitioner while serving as an Assistant in the District Munsif Court, Tirukovilur, died in harness on 08.02.1985. He left behind his wife and the writ petitioner (posthumously born). The mother of the writ petitioner was not an educated person, who can be employed. But, the petitioner made a representation, seeking appointment on compassionate grounds and that was considered by the learned Principal District Judge at Cuddalore, and the writ petitioner came to be appointed on 22nd February, 2007, as Junior Assistant and her appointment has been made on compassionate grounds. The writ petitioner accordingly joined the service and started discharging the functions attached to the said post of Junior Assistant. However, the matter appears to have been taken up with the State Government for the purpose of regularising the services of the writ petitioner and the State Government appears to have declined the request made for regularising the services of the writ petitioner and based upon the orders of the Government, this Court on its administrative side, through its proceedings dated 30th December, 2014, has communicated to the learned Principal District Judge, Cuddalore, that the State Government has rejected their proposal for regularising the services of the writ petitioner. Thus, the learned Principal District Judge, Cuddalore, dispensed with her services as she is still working on temporary basis only as a Junior Assistant. It is this order dated 8th January, 2015, through which the services of the writ petitioner have been dispensed with, which has come to be challenged in this writ petition.

3.India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavour for promoting the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective

provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment opportunities to the members of the family of the deceased Government servants has arisen.

4. A Government servant is expected to give his full time attention and energy and render his very best of attention for securing faithful implementation of various schemes and welfare measures brought in place by the State Government, he is termed as a round the clock servant of the State and he should devote and dedicate himself for providing good quality services to the citizens. Should, unfortunately, any such employee die in harness, his family members cannot be left behind in distressful conditions, unattended to and uncared for. With the sudden departure of a breadwinner, we should be alive to the fact that most of the Indian families lose the very source of their sustenance. It is not at all difficult for us to imagine that inspite of rapid strides of progress, the country has been making in all Sectors, still there are several lakhs of families having a single breadwinner and on an average 4 or 5 hungry persons depend on him for their sustenance and survival. In such a scenario, if that breadwinner vanish suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. His savings would be hardly enough to see them through the next couple of months, at best. During the best days of a man, he might have contributed meaningfully, given the fact that whatever marginally that would make a difference to the State Services and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them.

5. Apart from the civil servant enjoying the status as such, upon his death, if his family members who are surviving are not to be taken care of by the State, the prospects are such that a negative image can be spread in the Society that the State never bothers for the well being of the dependents of the Government servants. It is to avoid any such negative image gaining ground, the State Government as a socio welfare measure, has put in place a mechanism for providing employment to one of the eligible dependents of the family of the deceased Government servant. Several meaningful conditions are attached to be complied with before hand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be thrown open to competition for one and all. All members who are eligible to be so recruited should be permitted to compete and the best amongst them found suitable

can alone get employment. Therefore, an exception is sought to be carved out from this constitutionally assured mechanism of filling up public employment while providing for making appointments on compassionate grounds. Possibly, conditions can be stipulated such as that at the time of death, the left over service of the deceased employee before he attains the age of superannuation should not be less than a reasonable period, say three years or at best five years. Similarly, a stipulation that appointment on compassionate grounds should be claimed as quickly as possible after the death of the civil servant, a duration in this regard can be prescribed not to exceed by a reasonable length of time of say three years or at best five years. If the surviving members of the civil servant who died with the hardships of life, can get along and carry on their show for considerable length of time after the departure of the breadwinner by far in a reasonable manner, interference can be drawn from that the family of the deceased civil servant is able to feed for itself, notwithstanding the loss of the breadwinner. The period of endurance of such a family holds out an assurance that the family has got over the trauma caused by the departure of the breadwinner, but, it has the social resources to carry on with the show in his absence as well.

6. In these set of circumstances, the State Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

7. When we keep these factors in mind and also in view of the fact that making appointments on compassionate grounds is not one of the identified/marked sources of recruitment to civil service-- rather it is an exception to the normal constitutional norm of allowing all people to contest and compete--appointments on compassionate grounds cannot be made after long years have gone by, from the date of the death of the civil servant.

8. In the instant case, there is an apparent error of misdirection of discretion committed by the Principal District Judge, in appointing the writ petitioner on compassionate ground on 22nd February, 2007, whereas, the father of the writ petitioner died more than two decades, prior thereto. Equally unfortunately that the proposal for regularisation of the services of the writ petitioner was rejected after she has rendered seven years of service. During this seven years period, possibly, she may have missed out out 2 or 3 bright prospects of getting employed somewhere suitably. In these extraordinary

circumstances, while we reiterate and uphold the right of the State Government to object to entertaining the claims for making appointment on compassionate grounds after lapse of long years from the date of death of the civil servant concerned, however, we are now required to strike a proper balance between the claim of the writ petitioner on one hand, which is entirely rooted in equity and the right of the State Government to object to regularise her civil services, on the other. We reiterate and we request the High Court, on the administrative side to instruct strictly all the appointing authorities under its administrative control not to entertain any claims for making appointment on compassionate grounds, by fixing an appropriate maximum period for making such claims say three or five years as the case may be, but not beyond thereafter from the date of death of such an employee who has a left over service of 3/5 years for his eventual retirement on superannuation basis and not to make any such appointment beyond the said period henceforth.

9. It may be a different matter if the employee concerned died in service while trying to protect the property of the Court/State Government as the case may be and while trying to save it from any accidental hazards such as fire, flooding, etc., or while trying to save the record or property of the Court/Government from the hands of miscreants who are trying to destroy the same, as those cases, require greater amount of compassion to be shown as the individual concerned has made the highest sacrifice of his own life, for the cause of the State. In such cases, perhaps a longer duration of even ten or fifteen years can be considered as reasonable. Those, who lay down their lives while trying to save/protect the interest of the State Government/Court, stand on a lofty pedestal in comparison to those who met with either natural or self inflicted unnatural death. In no case, the time limit prescribed for entertaining the claims for compassionate appointment should be kept open like in the instant case for more than two decades. Any attempt to entertain any such claim, would convert the scheme of making compassionate appointments into a different form of hereditary employment. It would also tend to convert the scheme of compassionate appointments into a source of recruitment altogether and both the aforementioned factors are not the pursuits, which should be allowed to be undertaken or encouraged by the State Government and its organs.

10. While we uphold the principle behind the decision of the State Government not to approve the proposal for regularisation of the services of the writ petitioner, however, we take note that the writ petitioner, that too a female employee, having rendered more than eight years of services continuously, which is totally without any blemish, is entitled to seek some protection or the other against any unjust and

unexpected ouster from service, for no fault directly attributable to her.

11. Therefore, as the extraordinary circumstances presented in this case commend, we allow the Writ Petition, set aside the impugned order dated 8th January, 2015 passed by the learned Principal District Judge and direct him to continue the writ petitioner in service and then seek a relaxation to be made by the State Government for the purpose of regularising her services, which need not be treated as a valid or good precedent in respect of any other cases by the State Government. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Principal District Judge
Cuddalore District
Cuddalore.
2. The Secretary to Government
Home (Courts-V) Department
Fort St. George
Chennai 9.
3. The Registrar General
High Court of Madras
Chennai 104.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.3610
+1cc to Mr.M.Muthappan, Advocate, S.R.No.3933
+1cc to the Government Pleader, S.R.No.3651

W.P.No.1207 of 2015

NRI (CO)
CA(10/02/2017)