IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM

THE HON'BLE MR. JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. No.186 of 2015
and
M.P.Nos.1, 2 and 4 of 2015

R.Visoliya .. Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Principal Secretary to
Government,
Home Department (Courts - 5),
Secretariat, Chennai - 9.

2.The Registrar General,
High Court, Madras,
Chennai - 104.

3.The Principal District Judge,
Vellore District,
Vellore. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records made in the impugned order of the first respondent vide Letter No.89645/Ne.M.5/2013-5 dated 24.11.2014 and consequential order of the third respondent vide order in Dis.No.127/2015/A dated 07.01.2015 and quash the same and direct the respondents to regularise the service of the petitioner with effect from her date of her initial appointment i.e. 27.07.2007.
(prayer amended as per order dated 09.01.2015 in M.P.No.3 of 2015 in W.P.No.186 of 2015)

For Petitioner .. Mr.S.N.Ravichandran

For Respondents .. Mr.P.S.Sivashanmugha Sundaram,
Spl. Govt. Pleader for R1
Mr.V.Ayyadurai,
Addl. Advocate General for R2 & R3

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ORDER

(Order of the Court was made by NOOTY. RAMAMOHANA RAO, J.)

This writ petition is instituted by an Assistant working in the unit of the District Court at Vellore, aggrieved by the orders passed on 24.11.2014 by the first respondent/State Government, returning the proposals submitted by the High Court for regularisation of her services.

2.The father of the writ petitioner one Mr.C.Rajamanickam while working as an Assistant in Sub Court, Vellore died prematurely on 04.02.2006 at the age of 48 years. He left behind apart from the petitioner, her mother/his widow, one son by name Vivek Raj and another daughter Vidya. It appears there is no other earning member in the family. The mother of the writ petitioner is an illiterate person and hence she could not seek appointment on compassionate grounds. The brother of the writ petitioner Mr.Vivek Raj, who had just completed Higher Secondary Examination, had submitted an application on 03.04.2006 requesting for appointment on compassionate grounds. But, however, Mr.Vivek Raj was not provided with any employment immediately. It is obvious that unless a vacancy becomes available, it would not be possible for one to provide employment even on compassionate grounds. Since Mr.Vivek Raj was pursuing his education, the writ petitioner appears to have sought for employment on compassionate grounds instead of considering the case of her brother Mr.Vivek Raj. It is appropriate to note that Mr.Vivek Raj has given his consent and no objection for consideration of the claim of the writ petitioner for such appointment. Accordingly, the learned Principal District Judge, Vellore District, by his proceedings dated 25.07.2007, appointed the writ petitioner on temporary basis as a Junior Assistant and posted her to the Court of Principal District Munsif, Ambur against a clear vacancy available there. The writ petitioner was also temporarily promoted on 28.08.2014 to the post of Assistant as she has passed the Accounts Test for Subordinate Officers - Part I in the meantime. Thus the proposals have emanated for regularisation of the services of the writ petitioner. When those proposals have been forwarded by the High Court to the State Government through the impugned order, those proposals have been returned. Only reason assigned by the State Government is that the application submitted by the brother of the writ petitioner on 03.04.2006, seeking appointment on compassionate grounds has not been pursued and hence the question of making an appointment in favour of the writ petitioner on compassionate grounds would not arise.

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3.A Government servant is expected to give his full time attention and energy and render his very best of attention and services for securing faithful implementation of various schemes and welfare measures put in place by the State Government. Hence 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 their only source of 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 vanishes suddenly, it is not at all difficult for one to visualise the harrowing plight to which the family would be reduced to overnight. The savings made by the public servant thus far would be hardly sufficient to see them through the next six months, at best. During the best days of a man, he might have contributed meaningfully, while serving the Government, given the fact that whatever marginally that would make a difference, to the State's service and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them, by those servants including the deceased employee.

4.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 wellbeing of the dependants of the deceased 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 known as compassionate appointment scheme, for providing employment to one of the eligible dependants of the family of the deceased Government servant. Several meaningful conditions are prescribed 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 of the Society 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,

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there should not be any other earning member in the family, 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, say, three years or at best five years. If the surviving members of the civil servant who died, 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, inference can be drawn from that the family of the deceased civil servant is able to fend 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 and more importantly it has the necessary social resources to carry on with the show in his absence as well.

5.There is also one other feature which we require to notice, relating to who amongst the surviving members of the family should seek appointment on compassionate basis. That is a matter of choice amongst the surviving members of the family. However, the obligation thrust upon the person so chosen is that he shall undertake to look after the well-being and welfare of all the members of the family of the deceased Government servant, thereafter. When once the choice rests with the family members, may be, initially a particular member may have opted or chosen to shoulder all the responsibilities of the family. But if the appointment is not forthcoming immediately in favour of such a chosen person, there can be a change in the consideration of the factors relevant for securing appointment by the family members. For instance, if there is a grown up female child in the family and if that female child has attained the necessary age of atleast 18 years to render herself eligible for seeking appointment, in the meantime, the claims of such a female child can be requested to be considered in place of the earlier chosen person. For that, the already distressed family may consider that it would be more appropriate and suitable to ask for appointment in favour of a female child in the family rather than a male child, for getting the female child married thereafter might become convenient and easy. It is the obligation of the family to get the daughter married. But if the daughter was to be employed with the Government, the prospects of her getting married in quick time may brighten up. Therefore, so long as no other family member is employed and the family has not yet got over the difficulties created by the sudden departure of the breadwinner, in such circumstances, in our opinion, appropriate substitution of an earlier application by another member of the family, is to be allowed. Take for instance, if the male member in the family who is beyond 18

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years of age is in the first year or second year of an Engineering course in the immediate aftermath of the death of the Government servant and the family may have considered it difficult for allowing him to complete the rest of the course. But if such a member is not appointed immediately and time passes by, he may have reached in his academic career a particular stage where pursuing further the said academic course is far more important and it would outweigh the compulsion of securing employment for himself and consequently, the family members may have preferred to allow the said male member to complete the course of study which he was pursuing and instead seek employment in favour of a female child in the family, who has in the meantime, attained the minimum age of 18 years required for consideration for such appointment. Therefore, it is not necessary for the family of the deceased Government servant to seek employment only in favour of the eldest male or female member of the deceased Government servant. It may in some cases turn out that the eldest child of the deceased Government servant may not be maintaining a good health condition as well or he may be having any other special disadvantage, which can effectively prevent him from taking the public employment. In these given set of circumstances, the choice to seek employment in favour of one other family member lies with that of the family and no such restriction or impediment can be created by insisting the eldest amongst the surviving family members of the deceased Government servant alone, should seek employment. We are of the firm opinion that the choice should be left to the surviving family members of the deceased Government servant and no rigid approach in that regard is desirable to be adopted.

6.Similarly, even if an application is made seeking employment in favour of one particular member of the family, before any such appointment is made, the application can be allowed to be substituted with that of any other family member as well. It is for the family of the deceased Government servant to choose and a rigid approach not to allow any substitution to take place is not an appropriate measure of providing succour and help to the family of the deceased Government servant, which is the very objective and rationale behind the scheme. There can be imponderable factors as to why an earlier application may not be pursued. Hence we are of the opinion that the rejection of the proposal by the State Government to regularise the service of the writ petitioner only on the ground that the earlier application is not pursued but substitute application is considered, may not be most appropriate and is also not justified. If the application submitted by one of the family members has already resulted in an order of appointment in favour of such an applicant, at that stage, perhaps substitution may not be warranted or entertained but like in the instant case, where the application made by one member of the family seeking appointment on compassionate basis is still pending

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consideration, any such subsequent application in place of the former one duly obtained with the consent of the earlier/former applicant is liable to be treated as one of substitution but not be treated as a subsequent application or a fresh application or a case of the family making multiple applications.

7.By virtue of the interlocutory order passed on 09.01.2015 in M.P.No.4 of 2015 in W.P.No.186 of 2015, which shall hold the field, we allow the writ petition and quash the impugned order by directing the State Government to consider afresh the question of regularising the service of the writ petitioner, if all other conditions for such regularisation are satisfied, within a maximum period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

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Sub Asst. Registrar

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To

1.The Principal Secretary to
Government,
Home Department (Courts - 5),
Secretariat, Chennai - 9.

2.The Registrar General,
High Court of Madras,
Chennai - 104.

3.The Principal District Judge,
Vellore District,
Vellore.

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+1cc to Mr.S.N.Ravichandran,Advocate sr.13671

+1cc to Government Pleader sr.13837

W.P.No.186 of 2015

kgk(co)
ss(23/03/2017)

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