

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.22058 of 2008

and

M.P.No.1 of 2008

Tmt.Devi

... Petitioner

Vs

The Management of
Metropolitan Transport Corporation
(Chennai) Ltd
Anna Salai, Chennai - 600 002.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of respondent letter No.9519/Na.Pa.Pirivu/Gratuity-4/MTC/2008 dated 16.07.2008 and quash the same and consequently direct the respondent to appoint the petitioner on compassionate ground, refund the amount collected towards the contribution to the Engineering College Medical College, Polytechnic and Training cost and pay the Death Relief Fund.

For Petitioner: Mr.S.T.Varadarajulu

For Respondent: Mr.P.Paramasivadoss

O R D E R

Heard Mr.S.T.Varadarajulu, learned counsel appearing for the petitioner and Mr.P.Paramasivadoss, learned counsel appearing for the respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records of respondent letter No.9519/Na.Pa.Pirivu/Gratuity-4/MTC/2008 dated 16.07.2008 and quash the same and consequently direct the respondent to appoint the petitioner on compassionate ground, refund the amount collected towards the contribution to the Engineering College

Medical College, Polytechnic and Training cost and pay the Death Relief Fund."

3. The case of the petitioner is as follows:-

The petitioner is the wife of employee of the respondent-corporation who died during the course of his employment with the Corporation. The petitioner-husband was appointed as a Driver, who on completion of training having regularly recruited by the Corporation and joined service on 24.12.2007. Thereafter, he was working continuously and discharging his duties as Transport Driver. Unfortunately, on 12.02.2008, while he was returning from duty, he met with a road accident and sustained grievous injuries and he was admitted in a private hospital, where he succumbed to his injuries on 18.02.2008. Since the petitioner's death occurred due to the accident, he met with, when he was returning home after completion of duty, it is to be stated that it was in the course of the employment.

4. On the death of her husband, the petitioner has submitted an application for grant of 3 reliefs, namely (1) Death relief fund (Rs.1,00,000/- (one lakh) (2) contribution paid by her husband towards engineering, medical college and polytechnic Rs.5,500/- (3) Balance salary amount and also seeking compassionate ground appointment for herself.

5. Representation dated 02.06.2008 was sent in this regard for seeking the above referred to reliefs, however, the same was rejected vide proceedings dated 24.06.2008. The said proceeding is under challenge in the present Writ Petition.

6. The learned counsel for the petitioner would submit that the rejection was on the ground that the petitioner was only a temporary worker and he did not make any contribution towards death relief fund in his short span of employment and therefore, the family of the petitioner was not entitled to the reliefs as claimed by the petitioner herein.

7. The learned counsel for the petitioner would submit that for all practical purposes, the appointment of the petitioner-husband was regular appointment and therefore his family was entitled to the benefits as aforesaid. He has submitted that the Respondent-Corporation can consider the case for compassionate ground appointment, since the petitioner herein is a Postgraduate and M.Phil degree holder and she can be accommodated in any suitable post.

8. At the time of admission, after taking notice, Mr.G.Muniratnam entered appearance on behalf of the Corporation and filed counter affidavit. It is clearly stated that as regards the refund of the amount received from the petitioner's

husband as contribution towards Medical College, Engineering College, Polytechnic, the same will be returned. As regards the other reliefs namely Death Relief Fund, the petitioner's husband having not contributed to the fund account, cannot claim the same, since, the death relief fund is a contributory fund. He would also submit that consideration of compassionate appointment does not arise in the case of the petitioner, since the petitioner-husband was employed only on a temporary basis and therefore, the said relief cannot be granted.

9. This Court has considered the rival submissions of the learned counsels appeared for the parties and also perused the materials and the pleadings placed on record.

10. This Court is in agreement with the submissions made by the learned counsel for the petitioner that for all practical purposes, the appointment of the petitioner's husband was regular appointment, though it was termed as temporary for the initial period. Unfortunately, the petitioner's husband died within a few months from the date of his appointment and it does not impede the Corporation to include the case of the petitioner for the benefits as applicable to other regular employees.

11. As regards the submission of the respondent with regard to Death relief fund, no doubt, the same is contributory fund and therefore, the petitioner is not entitled for the same, since there was no contribution from the petitioner side to the fund.

12. As regards claim for compassionate appointment, the same cannot be rejected solely on the ground that the petitioner's husband is employed only on temporary basis. Compassionate ground appointment cannot be applied in straitjacket formula with a legal rigidity and rigour and the same has to be considered on the basis of the circumstances in which the family was placed at the time of death of the employee.

13. In the circumstances, this Court is of the considered view that the claim of compassionate appointment of the petitioner herein has to be considered like any other request for compassionate appointment of other regular and permanent employees who died in harness.

14. In the said circumstances, there shall be a direction to the respondent-Corporation to refund the contribution paid by the petitioner's husband towards Medical College, Engineering College and Polytechnic and also consider the claim of the petitioner for compassionate appointment for herself by taking into account the untimely of death of her husband. The

Corporation is also directed to take into consideration the petitioner's candidature for accommodating her in any suitable post for compassionate appointment . The direction of this Court shall be complied with by the Corporation within a period of 4 weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

The Management of
Metropolitan Transport Corporation
(Chennai) Ltd
Anna Salai, Chennai - 600 002.

+1 CC to Mr.S.T.Varadarajulu, advocate sr 85702.

+1 CC to Mr.P.Paramasivadoss, Advocate sr 86551.

W.P.No.22058 of 2008 and
M.P.No.1 of 2008

SP(11/01/2018)

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