

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.30342 of 2014

& MP.No.1 of 2015

K.Arul

.....petitioner

Vs

1. The State of Tamil Nadu,
rep. by Secretary to Government,
Revenue Department,
Secretariat,
Chennai-9.

2.The District Collector,
Dharmapuri District,
Dharmapuri.

3.The Revenue Divisional Officer,
Dharmapuri.

4.The Tahsildhar,
Harur Taluk,
Harur.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus to direct the respondents herein to consider the claim of the petitioner for compassionate appointment to any suitable post in commensurate with his qualification and eligible and to pass appropriate orders within a limited time frame.

For Petitioner : Mr.M.Ravi
For Respondents: Mrs.R.Janaki
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking for a writ of mandamus to direct the second respondent to give appointment to the petitioner on compassionate ground on account of the death of his father, who died in harness on 18.05.1996, while working as a Village

Assistant, or pass any other writ as deemed fit in the facts and circumstances of the case.

2. As it appears that the petitioner's father while working as Village Assistant at Settrapatty Village, Harur Taluk, Dharmapuri District died in harness on 18.05.1996 leaving behind his widow, three sons and a daughter. Soon after the death of his father, the elder son of the petitioner namely Tr.K.Anbalagan, made an application seeking for compassionate appointment. But his father being not in any regular service his prayer was rejected by the fourth respondent vide proceeding in No.7065/96 dated ..07.1996. Subsequently, the Government vide G.O.Ms.No.362, Revenue (Per.7-2) Department dated 07.07.1999, had stated that the services of the Village Assistants, who have been regularised after 01.06.1995 and who died in harness, their legal heirs shall be considered as the Village Assistants for compassionate appointment. Accordingly, the service of the petitioner's father was regularised by the fourth respondent vide proceeding in Na.Ka.No.7838/99/A3 dated ..03.2001 with effect from 01.06.1995. Prior to that, the mother of the petitioner made an application seeking compassionate appointment for his son. Thereafter, ban on the recruitment being in force, such request of the mother of the petitioner was not taken into consideration. The Government in G.O.Ms.No.42, Labour and Employment (Q1) Department dated 12.03.2007 had instructed that the compassionate appointment be given effect only in case of legal heir of Group 'C' and 'D' employee. There in it was also mentioned that the earlier practice of filing the application within three years of the death of the employee dying in harness, shall continue. So also such appointment be made against the actual vacancies and no posts shall be created for the purpose. So also taking into consideration, the fact that there was employment ban on employees, who have expired more than three years earlier to the aforesaid Government Order, their legal heir's application could have been time barred, a grace period was given to file the application. The petitioner's elder brother thereafter, filed an application in the year 2010 seeking compassionate appointment. Both the applications of her mother were taken up for consideration and vide Na.Ka.No.A4/33207/2010 dated 21.01.2011, his application was rejected as time barred. Again another application was filed by the brother of the petitioner on 05.12.2011 indicating therein, that he had earlier filed an application in the year 1996 and requested for compassionate appointment as his application was not time barred but assigning reasons that his earlier application on the aforesaid ground was rejected vide order dated 21.01.2011 and in the meanwhile, the petitioner has become age bar, and his case cannot be considered. Then the present petitioner who is

another son of the deceased made an application to give compassionate appointment on account of the death of his father. In the said petition as it appears no decision has been taken though the petitioner was asked to produce all the documents before the Tahsildar on 26.08.2014 at 11 a.m. The petitioner's grievance is therefore his father's service having been regularised and his brother's application in this regard pending since 1996 which was within time limit, followed by his mother's application, but the same have been rejected on the ground that he was age barred, his case deserves consideration for compassionate appointment. Therefore, the prayer as aforesaid.

3. The same is disputed by the State Government, with the averments that though the service of the petitioner's father was regularised and as such one of his family member is entitled to compassionate appointment, if satisfies the criteria, in view of G.O.Ms.No.61, Labour and Employment Department dated 19.07.2006 but their application having been rejected as the same was not received in time and other application having been rejected taking into consideration of earlier rejection and also over age of the petitioner's brother and there being no provision for alternate appointment, the application filed by the present writ petitioner is devoid of merit and as such liable to be dismissed.

4. The learned counsel for the writ petitioner would submit that the application filed in 1996 could not be considered, as there was no provision for compassionate appointment applicable to service of his father then. However, the Government in the year 2001 having been taken a conscious decision to extend the benefit of compassionate appointment to the legal representatives of the deceased employee/Village Assistant whose services were regularised from 01.06.1995 and the service of the petitioner's father having been regularised since then, the application made by the petitioner's brother should have been considered, when his mother also filed another application in the year 2000 which was pending, immediately in the year 2001. But for the ban in the employment, as the same was not considered, it could not be said that the application was not made within time and later on rejected on the ground that he was age barred. Be that as it may, since the writ petitioner has filed an application for compassionate appointment, the authority must consider the same and give an appointment on compassionate ground, more particularly when he was asked to produce the certificates. Hence, it is submitted that this Court pleased to pass a writ of mandamus directing the respondent to give compassionate appointment to the petitioner.

5. Per contra, the same is vehemently opposed by the learned Additional Government Pleader and she would submit that since the application of the petitioner's brother has already been rejected on being time barred one, he has made no grievance against the same and there being no provision for alternate appointment, this writ petition filed is devoid of merit and therefore, the same is liable to be dismissed.

6. As it appears that the brother of the petitioner had applied in time but the same was rejected on the ground that there was no provision of compassionate appointment for Village Assistants, who were not in regular service. Subsequently, the mother of the writ petitioner made such a prayer to give appointment to his son, which was pending. However, the Government having subsequently, regularised the services of the writ petitioner's father, and one of the family members of the deceased employee if found otherwise suitable was entitled to compassionate appointment is not disputed. But then the application being not pending and the brother of the petitioner having filed an application at a belated date, the same was rejected. So also, it was found that he was age barred. However, it cannot be lost at sight that the application was made in the year 1996, followed by the application of his mother in the year 2000 and another application with all documents in the year 2010, but the same was found to be time barred and subsequent application as age barred. The petitioner thereafter has filed this writ petition for his compassionate appointment, which is pending and no order has been passed. In such facts and situation, this writ petition is disposed of with a direction to the respondent no.2, to take an informed and considered decision on such applications, taking note of the aforesaid facts and also the fact that the compassionate appointment is given to bail out the family member of an employee died in harness, from distress, within a period of two months from the date of receipt of a copy of this order and communicate the same to the writ petitioner. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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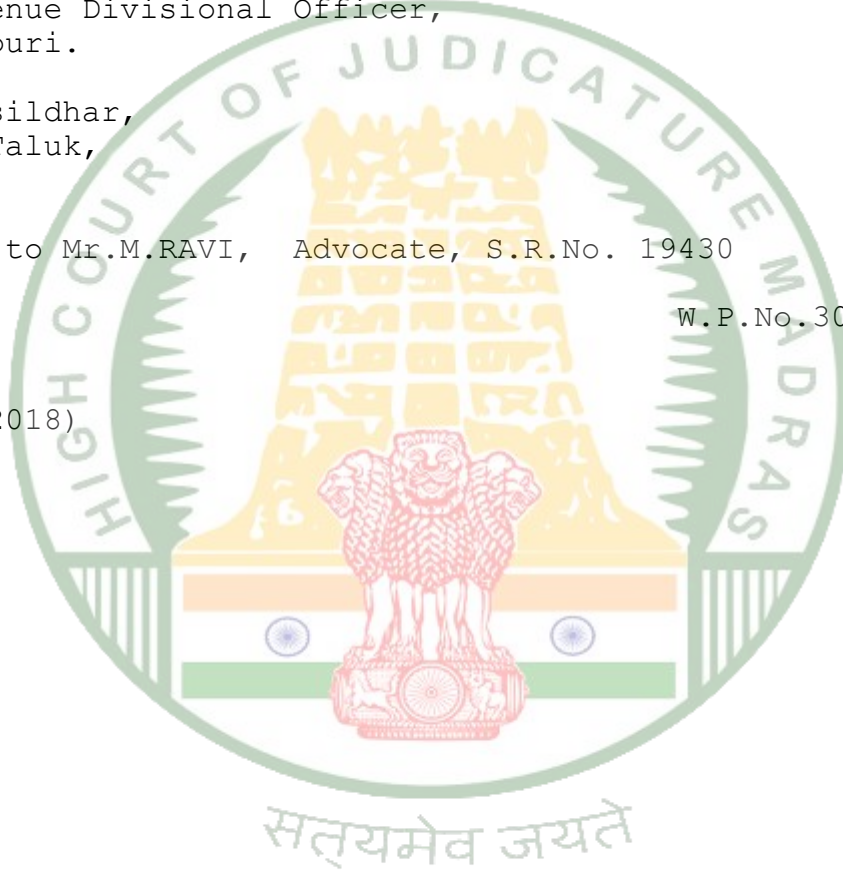
To

1. The Secretary to Government, State of Tamil Nadu,
Revenue Department,
Secretariat,
Chennai-9.
- 2.The District Collector,
Dharmapuri District,
Dharmapuri.
- 3.The Revenue Divisional Officer,
Dharmapuri.
- 4.The Tahsildhar,
Harur Taluk,
Harur.

+1cc to Mr.M.RAVI, Advocate, S.R.No. 19430

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SV(CO)
TR(05/04/2018)



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