

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2018

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.29656 of 2010
and
MP.No.1 of 2010

V.Premkumar

... Petitioner

Vs.

1. The Secretary to Government
Municipal Administration and
Water Supply Dept.
Chennai - 600 009
2. The Commissioner of Municipal Administrator
Chepauk, Chennai - 600 005.
3. The Municipal Commissioner,
Kancheepuram. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Second respondent relating to Na.Ka.No.1871/2010/H2 dated 22.02.2010, quash the same and to issue consequential directions to the respondents to give appointment to the petitioner as Sanitary Worker in Kancheepuram Municipality on compassionate grounds, consequent on the death of his mother, Tmt. T.Pushpa, on 23.07.2003 while in service, as Sanitary worker in Kancheepuram Municipality.

For Petitioner : Mr.A.R.Suresh
For R1 & R2 : Mr.J.Ramesh, AGP
For R3 : Mr.P.Srinivas

O R D E R

Challenging the order dated 22.02.2010 passed by the second respondent, the petitioner has come up with the present writ petition.

2.The case of the petitioner is that her mother Pushpa died on 23.07.2003 while she was serving as Sanitary Worker in Kancheepuram Municipality, leaving behind her husband, two married daughters and three sons, including the petitioner herein, as her legal heirs. At that time, his father was working in the Postal department and his elder brother was employed in the police department, however, they have been residing separately and his sisters were already married. The another brother, who is physically handicapped and also unmarried, is under the custody of the petitioner. As the petitioner was left in lurch without any support from his father and brother and has been living in indigent circumstances, he filed an application dated 08.10.2003 seeking employment on compassionate grounds, which was not considered by the third respondent. In the mean time, his father retired from service on 31.01.2008 and his brother died on 09.04.2009. Pursuant to the same, the petitioner again submitted an application dated 22.09.2009 seeking appointment on compassionate grounds to the third respondent, who, inturn, by his proceedings in Na.Ka.No.9544/2009/H1 dated 19.10.2009, forwarded the same to the second respondent. However, no order was passed by the second respondent, which compelled the petitioner to submit a petition to the Chief Minister's Cell. Thereafter, by the order dated 22.02.2010, the second respondent rejected the claim of the petitioner seeking compassionate appointment on the ground that both his father and brother were employed in the Government department at the time of death of his mother. Aggrieved over the same, the petitioner is before this Court.

3.Upon notice, the respondents 2 and 3 filed their respective counter affidavits, wherein, it has been averred that at the time of death of the petitioner's mother, his father and brother were employed in Government services and no certificate was produced to the effect that his father was living separately and hence, the petitioner is not eligible for appointment on compassionate grounds.

4.Heard the learned counsel appearing for the respective parties and perused the documents placed before this Court.

5.Admittedly, the petitioner's mother died on 23.07.2003 during her tenure in Kancheepuram Municipality as Sanitary Worker and at that time, the petitioner's father was working in the postal department, Government of India and his brother was working in the police department, Government of Tamil Nadu.

6.According to the petitioner, he applied for compassionate appointment on 08.10.2003 i.e., within three months from the date of death of his mother, stating that his father and brother though working, have been living separately and they left the

petitioner in lurch, without any support; and he has to take care of another brother, who is physically handicapped with 80% disability and hence, he is eligible to get employment on compassionate grounds. Thereafter, he made another application on 22.09.2009 stating that his father retired from service on 31.1.2008 and his brother, who was working in the police department, died on 09.04.2009 and as such, he is living in indigent circumstances.

7.However, by the order impugned herein, the second respondent rejected the claim of the petitioner seeking compassionate appointment on the ground that two of the legal heirs of the deceased employee were employed in the Government services and the petitioner has not produced any evidence to the effect that his father was living separately.

8.At this juncture, it is relevant to point out the observation of the Supreme Court in *State Bank of India v. Raj Kumar*, [(2010) II SCC 661], which is extracted hereunder:

"It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit. by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme....."

9.In view of the above, this Court is of the opinion that the very object of the appointment on compassionate grounds is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and the same cannot be bypassed, when any member of the deceased family is gainfully employed. When it is an admitted case that the petitioner's father worked in the Government service and subsequently, retired; and his brother also worked in the Government service, the respondents cannot be directed by means

of mandamus, to do something in favour of the petitioner herein, which is per se illegal.

10.Hence, the writ petition deserves to be dismissed and is accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Municipal Administration and
Water Supply Dept. Chennai - 600 009
2. The Commissioner of Municipal Administrator
Chepauk, Chennai - 600 005.
3. The Municipal Commissioner,
Kancheepuram.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.50936
+1cc to Mr.P.Srinivas, Advocate, S.R.No.51992
+1cc to the Government Pleader, S.R.No.51380

W.P.No.29656 of 2010

CS/09/10/18

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