

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

W.P.No.32507 of 2018

B.Velankanni

...Petitioner

Versus

1. The State of Tamil Nadu.
Rep. by its Secretary to Government,
Municipal Administration and Water
Supply Department,
Chennai - 9.
2. The District Collector,
Permabalur,
Perambalur District.
3. The Assistant Director of Town and Panchayats,
Trichy Region,
Collectorate Office,
Trichy, Trichy District.
4. The Executive Officer,
Labbaikudikadu Town Panchayat,
Labbaikudikadu,
Veppanthattai Taluk,
Permabalur District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records connected in Na.Ka.No.190 of 2015 dated 21.06.2016 of the fourth respondent, to quash the same and consequently direct the respondents to appoint the petitioner on compassionate grounds in any one of the suitable vacancy.

For Petitioner : Mr.G.Elanchezian

For Respondents: Mr.R.S.Selvam, (for R1 to R3)
Government Advocate.

: Mr.M.Thamizharasan, (for R4)
Government Advocate.

ORDER

The petitioner's husband Benjamin was initially appointed as Sweeper in the year 1993 on daily wage basis at Labbaikudikadu Town Panchayat, Kunnam Taluk, Perambalur District. He was brought under consolidated pay of Rs.1,200/- on 01.07.1999 by the 4th respondent, based on G.O.Ms.No.199, Municipal Administration and Water Supply Department dated 12.08.1997.

2. According to the petitioner, as per the said Government Order, her husband's services ought to have been regularized from the date of completion of 3 years of service, but, the same was not done. However, the respondent sent a proposal for regularization and it was under consideration. In the mean time, he died on 30.10.2002 leaving behind his wife and two daughters.

2.1. Hence, the petitioner made a representation to the respondents on 21.04.2003 and 05.05.2003 with a request to appoint her in any one of the posts on compassionate grounds as per G.O.Ms.No.84, dated 21.05.1998. After receiving the representation, the 4th respondent sent a letter to the petitioner dated 08.05.2003, stating that due to ban order issued by the Government in G.O.Ms.No.212 dated 29.11.2001, the request of the petitioner for compassionate appointment cannot be considered. It is further informed by the 4th respondent that as and when the Government lifted the ban order, the request of the petitioner will be considered for appointment on compassionate ground, till then, the representation is kept in abeyance.

3. It is the case of the petitioner that the Government by G.O.Ms.No.16, P&AR Department dated 21.02.2006, lifted the ban order. Even thereafter, the request of the petitioner was not considered.

3.1. Hence, the petitioner made several representations to the respondents on 27.12.2007, 26.12.2013 and 27.07.2015. But, there was no response.

3.2. Thereafter, she filed a writ petition in W.P.No.31074 of 2014 seeking a direction to consider her request for appointment on compassionate ground in any one of the vacancies. This Court, while admitting the writ petition, directed the respondents 3 and 4 to consider the petitioner's representation and pass orders on the same within a period of eight weeks. However, the 4th respondent, by an order dated 21.06.2016, rejected her claim on the ground that, when the deceased had been working on consolidated pay, there are no rules providing for appointment of legal heirs of such person for compassionate grounds.

3.3. Challenging the same, the present writ petition has been filed seeking a direction to the respondents to appoint the petitioner on compassionate ground in any one of the suitable vacancy.

4. This writ petition is opposed by learned Government Advocate appearing for the respondents on the ground that as per G.O.Ms.No.84, Municipal Administration and Water Supply Department, dated 21.05.1998, the compassionate appointment for the legal heirs of such person, who worked in the post with consolidated pay, shall be given only with consolidated pay.

4.1. As there is no post in the consolidated pay at the 4th respondent Town Panchayat and as the services of the petitioner's husband was not regularized before his death, the petitioner is not eligible for appointment on compassionate ground.

5. Yet another defence taken in the counter is that there is no vacancy in the 4th respondent Town Panchayat in consolidated pay and therefore, the request of the petitioner in terms of the benefit under G.O.Ms.No.84, dated 21.05.1998 could not be entertained.

6. Now, the issue to be considered is, when the claim for regularization is pending and the workman dies during the pendency of regularization, whether the legal heirs are entitled to make the claim that services should be regularized and if so, whether the petitioner would be entitled for appointment on compassionate grounds in the regularized service.

7. In the case on hand, the petitioner's husband died pending consideration of regularization of his services. Despite the death of the petitioner's husband, the claim for regularization should have been considered, but, that has not been done. Be that as it may, the petitioner only wanted appointment on consolidated pay and not even on regular time scale of pay.

8. The learned counsel appearing for the petitioner submitted that the petitioner is a widow with a liability to maintain her family and her two daughters. Even if a post on consolidate pay is given to the petitioner that will be sufficient to make both the ends meet.

9. The stand of the respondent is that there is no post on consolidated pay as stated in one part of the counter and there is no vacancy on consolidated pay as stated in other part of the counter and this dual stand is not acceptable. Even assuming that there is no vacancy on consolidated pay, it is open to the

respondents to create a supernumerary post and to accommodate her.

10. The learned Government Advocate appearing for the respondents vehemently opposed the appointment on the ground that the very purpose of granting compassionate appointment is to help the family in harness to get rid of the immediate crises due to loss of sole breadwinner. But, the present case on hand, the death of the petitioner's husband was long back and therefore, the claim of the petitioner for compassionate appointment cannot be considered.

10.1. This contention may be correct in several cases, but, it may not be correct in this case, considering the facts and circumstances that the claim is made by the widow with a responsibility to maintain her two daughters. Moreover, this was not the contention of the respondent, at the earliest stage. The petitioner was asked to wait during the ban period (of appointment). As the petitioner's husband was also working under consolidated pay, there may have been sufferings in the family to meet the daily requirements and the crisis continues, even after the death of the employee.

11. The Government should have considered the claim of the petitioner to give the appointment on a consolidated pay. Under such circumstances, the impugned order is set aside and accordingly, the writ petition is allowed. The respondents are directed to provide compassionate appointment to the petitioner, if she is otherwise eligible. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

ogy/klt

To

1.The State of Tamil Nadu.
Represented by its Secretary to Government,
Municipal Administration and Water
Supply Department,
Chennai - 9.

2.The District Collector,
Permabalur,
Perambalur District.

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3.The Assistant Director of Town and Panchayats,
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Collectorate Office,
Trichy, Trichy District.

4.The Executive Officer,
Labbaikudikadu Town Panchayat,
Labbaikudikadu,
Veppanthattai Taluk,
Permabalur District.

+1 CC to Mr.G.Elanchezian, advocate sr 88218.

+1 CC to Govt. Pleader sr 88350.

W.P.No.32507 of 2018

SSI (CO)
SP(11/02/2019)



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