



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 18.09.2018

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.10650 of 2014

M.Selvarajan

..Petitioner

Vs

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Tahsildar,
Tirunelveli,
Tirunelveli District.

..Respondents

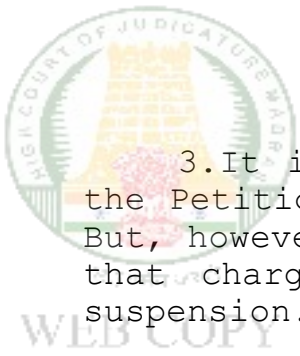
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings in Na.Ka.No.A4/87715/2009, dated 5.3.2014 and to quash the same and consequently to direct the first respondent to give appointment for the petitioner on compassionate ground on the death of the Petitioner's mother L.M.Seethalakshmi based on his application, dated 26.7.2010

For Petitioner :Mr.D.Srinivasaraghavan
For Respondents :Mr.K.Mu.Muthu
1 and 2 Addl.Govt.Pleader

ORDER

The Petitioner has come forward with this Writ Petition to quash the proceedings of the first respondent in Na.Ka.No.A4/87715/2009, dated 5.3.2014 and consequently to direct the first respondent to give appointment for the petitioner on compassionate ground on the death of the Petitioner's mother L.M.Seethalakshmi based on his application, dated 26.7.2010.

2.The first respondent has rejected the request of the Petitioner for compassionate appointment on the ground that his father was getting pension. It is the case of the Petitioner that his mother passed away on 9.12.2009. The Petitioner submitted his application seeking compassionate appointment on 31.12.2009 and on 26.7.2010 enclosing all the necessary documents. But unfortunately, the first respondent has rejected the request of the petitioner on the ground that his father is getting pension.



3. It is the further case of the Petitioner that the father of the Petitioner attained the age of superannuation in the year 2008. But, however he was not allowed to retire from service on the ground that charges are pending against him and he was placed under suspension.

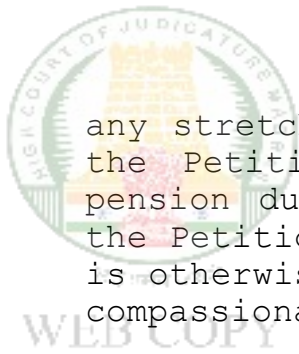
4. The case of the respondents is that there was a cessation of employer-employee relationship between the Petitioner and the respondents and the Petitioner's father was placed under suspension and was getting provisional pension and when the Petitioner's father was getting provisional pension, the family cannot be considered to be under indigent circumstances.

5. The father of the Petitioner has attained the age of superannuation in the year 2008. He was not allowed to retire from service. Hence he was deemed to be in service as there was no cessation of employer-employee relationship between the petitioner's father and respondents. However, the Petitioner's father is drawing provisional pension. Hence the application of the Petitioner for compassionate appointment has got to be rejected and the order of rejection made by the respondents is perfectly in order.

6. Heard both sides and perused the materials placed before this Court.

7. It is not in dispute that the Petitioner's father was placed under suspension in the year 2008 on the date of his retirement and is drawing the provisional pension. The Petitioner's mother died on 19.12.2009. It is also not in dispute that the Petitioner's application for compassionate appointment was rejected on the ground that the Petitioner's father was getting pension and that there was cessation of employee-employer relationship between the Petitioner's father and the respondents. The crux of the impugned order is that as the Petitioner's father was getting pension, the Petitioner was not entitled to seek appointment on compassionate grounds. The fact that the Petitioner's father was getting provisional pension shows that there was cessation of employment.

8. This Court had an occasion to deal with similar issue in a decision in ***R. Kanagasanthi .vs. Tamil Nadu Civil Supplies Corporation, Chennai -10 and another reported in 2014(1) LLN 515 (Mad.)***. In that decision, this Court had categorically held that the amount paid or payable to the deceased employee cannot be taken into account for the purpose of depriving compassionate appointment and those benefits are in any event have to be paid to the dependants/legal heirs of the deceased employee and that cannot be quoted as a reason for not extending the compassionate appointment. In the present case on hand, the employee namely father of the Petitioner is alive and he was drawing the provisional pension and the Petitioner is seeking compassionate appointment on account of the demise of his mother. The provisional pension/subsistence allowance that was being paid to the petitioner's father cannot at



any stretch of imagination be construed to deprive the request of the Petitioner for compassionate appointment. The drawal of the pension due to the petitioner's father cannot deprive the case of the Petitioner being considered for compassionate appointment, if he is otherwise satisfies the required qualification for appointment on compassionate grounds, provided such scheme exists.

9. Taking note of the aforesaid decision and the contention of the parties, this Court directs the respondents to consider the Petitioner's request for compassionate appointment on account of the demise of his mother on 09.12.2009, if he satisfies all the conditions and be placed in the seniority list maintained for compassionate appointment.

10. With the above directions, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Tahsildar,
Tirunelveli,
Tirunelveli District.

+2 CC TO Mr.D.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 85118,84972.
+1 cc to Special Government Pleader, SR.No.85191.

VSN

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