



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD) No.12065 of 2017

and

W.M.P. (MD) .No.9289, 9290 and 18121 of 2017

V.Selvam

.. Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Regional Assistant Director
of Town Panchayats,
Madurai Collectorate Campus,
Madurai,
Madurai District.

3.The Executive Officer,
Town Panchayat Office,
Elumalai,
Periyur Taluk,
Madurai District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent in his memorandum in Na.Ka.No.25/2017 dated 25.05.2017 and subsequent impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.27012/2017/ng2 dated 08.06.2017 and quash the same as illegal and consequently to direct the 1st respondent to consider the petitioner for appointment on compassionate ground in commensurate with petitioner's educational qualification either as Sweeper or as Watchman in the light of note 6 of the Government Letter (Ms).No.55 Labour & Employment (Q.1) Department, dated 24.05.2016 within the period that may be stipulated by this Court.

For petitioner	: Mr.K.Ponnaiah for M/s. Ajmal Associates
For R-1 & R-2	: Mrs.S.Srimathy Special Government Pleader
For R-3	: Mr.N.S.Karthikeyan Standing Counsel



O R D E R

Mrs.S.Srimathy, learned Special Government Pleader takes notice for the Respondent Nos.1 and 2 and Mr.N.S.Karthikeyan, learned Standing Counsel takes notice for the third respondent.

2. By consent of both parties, the main writ petition is taken up for final disposal at the stage of admission itself.

3. Heard Mr.K.Ponnaiah for M/s. Ajmal Associates, learned Counsel appearing for the petitioner, Mrs.S.Srimathy, learned Special Government Pleader appearing for the Respondent Nos.1 and 2 and Mr.N.S.Karthikeyan, learned Standing Counsel appearing for the third respondent.

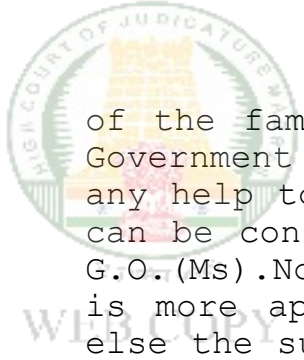
4. The writ petitioner belongs to a Scheduled Caste. His father A.Velu was working as a Sweeper in the third respondent office. The writ petitioner's father passed away on 22.02.2017. The writ petitioner therefore applied for appointment on compassionate ground. The Jurisdictional Tahsildar has given a Certificate in favour of the writ petitioner. But the third respondent has passed the impugned order dated 25.05.2017 rejecting the request of the writ petitioner on the ground that his brother is already employed as Sweeper in the very same Town Panchayat Office.

5. The said rejection order is impugned in this writ petition.

6. The learned Standing Counsel for the third respondent placing reliance on G.O.(Ms).No.40, Labour & Employment (Q.1) Department dated 05.01.1990, pointed out that if another member of the same family is already employed in Government service, the question of granting compassionate appointment to one more dependant will not arise.

7. I went through the the said G.O.(Ms).No.40, Labour & Employment (Q.1) Department dated 05.01.1990. The said Government Order only states that if another member in the family of the deceased employee is already employed in Government service, it is not necessary to consider application for grant of Compassionate appointment made by another member of the family. The expression set out in the Government Order is "need not be considered" and not "shall not be considered". In other words there is no prohibition against grant of appointment on compassionate ground in favour of another dependant.

8. The learned counsel for the writ petitioner placing reliance on <https://hcservices.ecourts.gov.in/hcservices/> G.O.(Ms).No.155, Labour and Employment Department, dated 16.07.1993 pointed out that if it can be shown that the other member



of the family already got employment even before the death of the Government servant and he was living separately without extending any help to the family, then, the case of other eligible dependents can be considered. I am of the view that the subsequently issued, G.O.(Ms).No.155, Labour and Employment Department, dated 16.07.1993 is more applicable to the facts of this case. More than anything else the subject matter relates to the post of Sweeper in the third respondent office.

9. Considering all these circumstances this Court quashes the impugned orders namely Na.Ka.No.25/2017 dated 25.05.2017 passed by the third respondent and Na.Ka.No.27012/2017/ng2 dated 08.06.2017 passed by the second respondent. There shall be a direction to the third respondent to grant compassionate appointment to the writ petitioner as a Sweeper in the third respondent office within a period of eight weeks from the date of receipt of a copy of this order. Such a direction is given, since it has not been pointed out that there are candidates in the waiting list for the compassionate appointment, who are senior to the writ petitioner.

10. This Writ petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Regional Assistant Director
of Town Panchayats,
Madurai Collectorate Campus,
Madurai,
Madurai District.
- 3.The Executive Officer,
Town Panchayat Office,
Elumalai,
Periyur Taluk,
Madurai District.

+One cc to Mr.N.S.Karthikeyan, Advocate, SR>No.42673
+One cc to The Special Government Pleader, SR.No.42446
+One cc to M/s.Ajmal Associates, Advocate, SR.No.42124
kmi
RL/7C/3P/SV/MMS/SAR4/6/2/2018