



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P (MD) .Nos.18970 and 17776 of 2018

A.Jeyalakshmi ... Petitioner in
W.P.(MD) No.18970 of 2018

S. Saranya ... Petitioner in
W.P.(MD) No.17776 of 2018

Vs.

1) The Government of Tamil Nadu,
Rep., by its Secretary,
Department of Rural and Urban Development,
St.George Fort,
Chennai. ...R1 in W.P.(MD) No.17776 of
2018

2) The Director of Rural Development & Village Panchayat,
Directorate Office,
Panagal Building,
Chennai - 60015 ... R1 in W.P.(MD) No.18970 of
2018 and R2 in W.P.(MD)
No. 17776 of 2018

3) The District Collector,
Collector Office,
Ramanathapuram. ... R2 in W.P.(MD) No.18970 of
2018 and R3 in W.P.(MD)
No.17776 of 2018

3) The Assistant Director of Village Panchayat,
Ramanathapuram District,
Ramanathapuram. ...R3 in W.P.(MD) No.18970 of
2018

4) The Block Development Officer,
The Nainarkovil Panchayat Union,
Nainarkovil,
Ramanathapuram District. ... R4 in W.P.(MD) No.17776 of
2018



5) K.Saranya

... R4 in W.P.(MD) No.18970 of 2018

6) A. Jeyalakshmi

... R5 in W.P.(MD) No.17776 of 2018

* R5 in W.P.(MD) No.17776 of 2018 is impleaded vide Court order dated 21.08.2018 in W.M.P.(MD) No.16110 of 2018.

PRAYER in W.P.(MD) No.17776 of 2018: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to provide compassionate appointment to the Petitioner in the office of respondents department in the place of her husband/A.Senthil Raja, S/o Alagar, who was working as an Assistant in the office of 4th respondent in the light of reply dated 21.11.2017 in Na.Ka.A1/160/2017 sent by the 4th respondent by considering the Petitioner dated 03.07.2018.

PRAYER in W.P.(MD) No.18970 of 2018: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing respondents 1 to 3 to consider the petitioner's representation dated 28.04.2017, in order to rise her valid objections to reject the 4th respondent's application for compassionate appointment and subsequently consider the petitioner's claim on the proceedings of service terminal and pension benefits to the petitioner.

In W.P. (MD) No.17776 of 2018

For Petitioner	:	Mr.R.Suresh Kumar
For RR 1 to 3	:	Mr.R.Sethuraman, Special Government Pleader
For R4	:	Ms.J.Padmavathidevi
For R5	:	Mr.M.Velmurugan

In W.P. (MD) No.18970 of 2018

For Petitioner	:	Mr.M.Velmurugan
For RR 1 to 3	:	Mr.S.Dhayalan, Government Advocate



C O M M O N O R D E R

Writ petition in W.P.(MD) No.17776 of 2018 has been filed seeking for issuance of a direction to the respondents to provide compassionate appointment for the petitioner in the office of respondents department in the place of her husband at the office of the 4th respondent in the light of reply dated 21.11.2017 in Na.Ka.A1/160/2017 sent by the 4th respondent by considering her representation dated 03.07.2018.

2. W.P.(MD) No.18970 of 2018 has been filed seeking for issuance of a direction to the respondents 1 to 3 to consider the petitioner's representation dated 28.04.2017 and subsequently consider the petitioner's claim on the proceedings of service terminal and pension benefits to the petitioner.

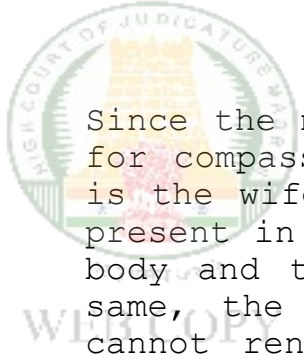
3. The petitioner in W.P.(MD) No.17776 of 2018 is the wife of the deceased and the fifth respondent is the mother of the deceased, who has also filed W.P.(MD) No.18970 of 2018. The mother of the deceased was made a party and got impleaded pursuant to the order in W.M.P.(MD) No.16110 of 2018 dated 21.08.2018.

4. For the sake of convenience, both the writ petitions are taken up together and disposed of by this common order.

5. The case of the prosecution is that there was a family quarrel between the deceased and his wife Saranya and there was a petition filed before the Family Court, Ramanathapuram on 03.02.2017 in H.M.O.P.No.35 of 2017 with regard to restitution of conjugal rights. Though the allegations are made by the daughter-in-law against the mother-in-law and mother-in-law against the daughter-in-law, this Court is not inclined to go into that aspect, as the problem between the daughter-in-law and mother-in-law is a perennial one and even the God cannot solve the problem.

6. Out of the wedlock between Saranya and the deceased, a female child was born on 05.11.2014 and they have named her as Amilthini. The wife of the deceased sought for compassionate appointment and made an application on 28.03.2017. The mother of the deceased has approached this Court earlier by filing a writ petition in W.P.(MD) No.24140 of 2017 and this Court has dismissed that writ petition by order dated 02.01.2018 on the ground that the wife of the deceased was not made a party. Hence, this petitioner in W.P.(MD) No.18970 of 2018, the mother of the deceased filed another writ petition.

7. The grievance of the mother of the deceased is that on account of the problem in the wedlock, employment should not be given to Saranya and it should be given to Amilthini, who is aged about three and half years old and the said compassionate appointment should be considered when she attains 18 years of age.



Since the mother of the deceased is over aged, she is not entitled for compassionate appointment. The only person who may be eligible is the wife of the deceased. The mother of the petitioner, who was present in the Court submitted that Saranya has an affair with some body and that is the reason for the quarrel, as a result of the same, the deceased passed away at a very young age. This Court cannot render any finding on that aspect, as the same is being disputed by the wife of the deceased.

8. The purpose of compassionate appointment is to ensure that there is an immediate redressal to the family, which is in distress. In this case, the contention of the mother of the deceased is that the daughter-in-law should not be given employment and that it should be reserved for the grand daughter cannot be accepted and the Government cannot be allowed to keep one post vacant or reserved for a period of 15 years. Secondly, the mother of the deceased is not eligible as she is more than 50 years.

9. The case of the petitioner viz., Saranya in W.P.(MD).No17776 of 2018 can be considered in the light of the judgments of the Apex Court in the case of Bhawani Prasad Sonkar vs. Union of India and others, reported in 2011 (3) LLN 37 (SC). The relevant portion of the judgment of the Honourable Supreme Court is extracted as follows:

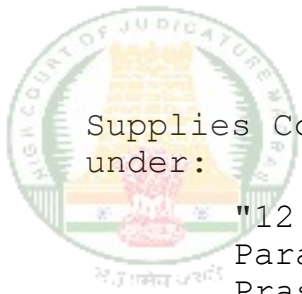
"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of Rules of Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the Scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz., Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III & IV posts."



Supplies Corporation}, the Supreme Court has held in paragraph 12 as under:

"12. At this juncture, it is relevant to point out Paragraph No.20 of a decision reported in Bhawani Prasad Sonkar vs. Union of India and others {2011 (3) LLN 37 (SC) : 2011 (4) SCC 209, wherein the Hon'ble Apex Court has held as follows:

Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:-

(i) Compassionate employment cannot be made in the absence of Rules of Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

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(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz., parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

In that case, the Hon'ble Apex Court has allowed the case of the Appellant by holding that testing on the touchstone of these broad Guidelines governing appointment on compassionate ground, it was of the opinion that the Appellant has made out a case for such appointment. As far as the case in hand is concerned, the Application for compassionate ground appointment was made within the time limit. It has also been held in a catena of decisions of the Hon'ble Apex Court that to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner,



Compassionate Appointment has got to be made. This has been established by the petitioner. The spirit of the Compassionate Appointment was to provide relief to the family members of the deceased persons and that on yardstick of social justice, such relief cannot be withdrawn retrospectively as the Government stopped appointments for certain periods and when there was a modification, after lifting the ban, the new scheme or modification has to take effect only prospectively. The Writ Petitioner has rightly contended that when there is a change in policy on 5.4.2007, while lifting the Ban, it could not result in denial of Compassionate Appointment to the petitioner, as any change would only be prospective in nature."

11. This Court would like to ensure that in the present days, even the son is not looking after his parents. That being the case, when there is a difference of opinion between the mother-in-law and daughter-in-law, certainly the mother-in-law will not be taking care of her daughter-in-law. That apart, there is an allegation that the petitioner in W.P.(MD) No.17776 of 2018 is having an affair and that there is a possibility of remarriage. Widow remarriage is not prohibited in law. Similarly, the old people have got to be taken care of.

12. It is very clear that the senior citizens will have to be taken care of. Hence, this Court is of the view that, the case of the petitioner Saranya shall be considered, if she is otherwise eligible. In case, she is given employment, the following conditions have got to be incorporated to the appointment order, for which the petitioner Saranya has no objection.

(i) Firstly on the gross salary, 25% of the amount will have to be paid to Jayalakshmi, mother of the deceased till Saranya continues with the employment.

(ii) The proportionate tax reductions, taking the whole salary into account for the purpose of income tax may be deducted, so that she will get the 25% net. If this is not done, the employee may avail loan and show low income as take home pay and thereby deprive the mother of the deceased in lurch.

(iii) The remaining 75% of the amount can be utilised by the petitioner Saranya as well as her daughter Amilthini. In case, Saranya gets remarried, 25% payable to Jayalakshmi will automatically increase to 32.33% and the remaining amount shall be payable to Saranya and her daughter Amilthini.

(iv) The contention that both the petitioners are having a house and they are well off cannot be decided in the writ petition as there is no material to that effect.



This fact got to be considered by the respondent while deciding about the grant of compassionate appointment to Saranya.

(v) In the present case on hand, the question of taking concern from other legal heirs may not arise as the mother of the deceased is not at all eligible to be considered for compassionate appointment, as she is more than 50 years.

(vi) The Government also should ensure that the proper orders are issued with regard to the compassionate appointment and situation like this, present one, namely, not only in the case of mother-in-law and daughter-in-law, there may be chances between son/daughter and mother/father. If some monetary benefits are given to the old age persons like the parents, if they do not take up employment, certainly they will have atleast one square meal a day and they are not driven to the Family Court claiming maintenance at old age.

13. Therefore, in the result, the relief sought by Jayalakshmi in W.P.(MD) No.18970 of 2018 is not granted and the Writ petition filed by her is dismissed. However, there shall be no order as to costs.

14. The Writ Petition filed by Saranya in W.P.(MD) No.17776 of 2018 is Allowed, provided, the petitioner is otherwise eligible. This Court also makes it clear that in the event of any untoward incident or demise of Jayalakshmi, the amount payable to her shall be paid to her grand daughter, according to the wish of the mother of the deceased.

15. Whatever documents that are required to be produced and any consent letter or any other document that is available with Jayalakshmi need not be produced as she will not part with the documents as her intention is that her daughter-in-law should not get the employment. The amount payable to the grandmother shall be continued to be paid to the granddaughter Amilthini, in the event of any untoward incident viz., death of the grandmother.

16. A copy of the salary certificate shall be forwarded to Jayalakshmi, in order to enable her to cross check the amount actually received by Saranya. The amount due to be paid to her, it can be either transferred to her personal account in the form of NEFT or RTGS.

17. With these observations and directions, W.P.(MD) No.17776 of 2018 is Allowed. However, there shall be no order as to costs.



Sd/-
Assistant Registrar(cs-I)

/True Copy/

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Sub Assistant Registrar(cs-I)

To

- 1) The Secretary,
Government of Tamil Nadu ,
Department of Rural and Urban Development,
St.George Fort,
Chennai.
 - 2) The Director of Rural Development & Village Panchayat,
Directorate Office,
Panagal Building,
Chennai - 60015
 - 3) The District Collector,
Collector Office,
Ramanathapuram.
 - 4) The Assistant Director of Village Panchayat,
Ramanathapuram District,
Ramanathapuram.
 - 5) The Block Development Officer,
The Nainarkovil Panchayat Union,
Nainarkovil,
Ramanathapuram District.
- +1cc to Mr.M.Velmurugan Advocate in SR.No.84283
+1cc to Mr.R.Suresh Kumar Advocate in SR.No.85606
+1cc to Special Government Pleaderf,Advocate in SR.No.84068

Common Order made in
W.P(MD) .Nos.18970
and 17776 of 2018
10.09.2018

STS
NM RP SAR1 03.12.2018 8P 9C