



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2018

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THE HON'BLE MR.JUSTICE S.VAIDYANATHANW.P.(MD) No.19942 of 2018

R.Rajeswari

... Petitioner

-vs-

1. The District Collector,
Office of Collectorate,
Madurai.
2. The Corporation Commissioner,
Madurai Corporation,
Madurai-3.
3. Assistant Commissioner,
Madurai Corporation,
Madurai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order in MaNi.30/9906/2016 dated 4.6.2018 of 3rd Respondent and to quash the same and to direct the respondents to give a government job on Compassionary Grounds on the basis of her elder daughter Manimegalai's representation dated 25.09.2015.

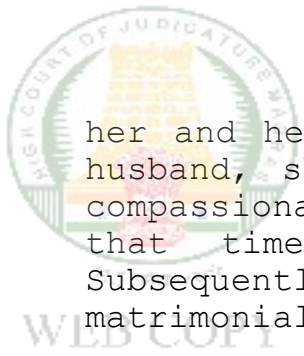
For Petitioner	: Mr.K.P.Ramesh
For R1	: Mr.K.Mu.Muthu
	Additional Govt. Pleader
For R2 & R3	: Mr.R.Murali

O R D E R

This petition has been filed, seeking to quash the impugned order in dated 04.06.2018 passed by the 3rd respondent in MaNi.30/9906/2016, in and by which, the request for transfer of appointment on compassionate ground to some other legal heir of the deceased with the consent of the previous applicant / legal heir, has been declined. The petitioner also sought a direction to consider the grant of appointment on compassionate ground on the basis of her elder daughter Manimegalai's representation dated 25.09.2015.

Brief Facts:<https://hcservices.ecourts.gov.in/hcservices/>

2. The case of the petitioner is that her husband had worked as a Sweeper in 68th Ward and died while in service, leaving



her and her four daughters in lurch. Pursuant to the death of her husband, she approached the 3rd respondent to give appointment on compassionate ground to her younger daughter, who was unmarried at that time and her request was not considered positively. Subsequently, her younger daughter got married and settled in her matrimonial family.

2.1. It is submitted by the petitioner that since she has been residing with her elder daughter in her matrimonial home and her daughter has been struggling to eke out her livelihood, the petitioner had requested the authority concerned to consider grant of appointment to her elder daughter in lieu of her younger daughter on the basis of the ruling that even married daughter is entitled to appointment on compassionate ground. Though her elder daughter had submitted a representation dated 25.09.2015 to the 2nd respondent for consideration, her request was rejected by order dated 04.06.2018, which is impugned herein. Therefore, the petitioner, challenging the said order and having left with no other efficacious remedy, is before this Court, seeking to quash the same.

3. Learned counsel for the petitioner has submitted that on an earlier occasion an application was submitted by the petitioner's younger daughter for appointment and since she got married and is well off, the petitioner decided to withdraw the said application with her younger daughter's consent and requested her elder daughter to be appointed on compassionate ground. It is further submitted that the 3rd respondent has mechanically rejected her claim on the ground that married daughters are not eligible to employment and that there cannot be any substitution of another person in place of person, who had already made an application. The 3rd respondent, without considering the fact that G.O.Ms.No.96 dated 18.06.2012 issued in respect of married daughters has been declared as null and void by this Court and therefore, the rejection on the said ground is not valid. Though her elder daughter got married on 13.11.2005, it has been erroneously mentioned that her marriage was solemnized before the date of 29.11.2001. Hence, it is argued that the impugned order is liable to be set aside, which is arbitrary in nature.

4. Per contra, though no counter affidavit has been filed by the 3rd respondent, it was vehemently contended by the learned counsel for the 3rd respondent that the petitioner's younger daughter, namely, Usha had made an application on 24.01.2013, seeking compassionate appointment, which is pending and that she, having got married, cannot substitute / recommend her elder sister Manimegalai for such appointment. It was further contended that there is no possibility of substitution of another person insofar as compassionate appointment is concerned, in the light of G.O.Ms.No.78 dated 21.04.2017 and therefore, the request of the petitioner cannot be entertained and is liable to be rejected. However, he has fairly submitted that the rejection on the ground that married daughters are dis-entitled to compassionate appointment, cannot sustain, in view of the judgment of this Court.



5. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for R1 and the learned counsel for R2 and R3 and also perused the material documents available on record including various Government Orders.

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6. A circumspection of the fact would reveal that the petitioner's husband died on 01.02.2012 and though initially, the petitioner recommended the name of her younger daughter for compassionate appointment, subsequent to her marriage and considering her state of well being, the petitioner made afresh representation, requesting the authorities concerned to consider her elder daughter's name for compassionate appointment. As the issue with regard to the entitlement of a married daughter for compassionate appointment, has already been considered by this Court and therefore, this Court does not want to go into that question.

7. It has been stated in the Government Order in G.O.Ms.No.78 dated 21.04.2017 that there cannot be any substitution of person, unless or otherwise the person, who made an application is no more or for any other reasons. It is pertinent to mention here that the said Government Order cannot have any retrospective effect, as the rights already accrued cannot be simply taken away by means of a Government Order. Though the application made by Manimegalai was rejected in the year 2018, the original application was made well within the time of three years and therefore, the request of the petitioner to consider her elder daughter's name for compassionate appointment is well founded and should be considered. Her name will have to be retained in the seniority list for the purpose of grant of compassionate appointment and the date on which application for change of name was made, will have to be taken into account for the purpose of maintaining her seniority list.

8. In the result, this Writ Petition is allowed and the impugned order of the third respondent dated 04.06.2018 passed in MaNi.30/9906/2016 is hereby set aside. It is made clear that after consideration of appointment of the petitioner's elder daughter, namely, Manimegalai on compassionate ground, 25% of the gross monthly income shall have to be directly paid to the petitioner / mother by way of NEFT or RTGS every month and the said gross income is subject to income tax deductions so as to ensure that the petitioner has not been let down without any care. No costs.

Sd/-

Assistant Registrar(RECORDS)

/True Copy/

Sub Assistant Registrar(CS-II)



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To:

1. The District Collector,
Office of Collectorate,
Madurai.
2. The Corporation Commissioner,
Madurai Corporation,
Madurai-3.
3. Assistant Commissioner,
Madurai Corporation,
Madurai.

+ 1 CC TO Mr.R.MURALI , ADVOCATE IN SR No. 88453.
+2 CCs TO Mr.K.P.RAMESH , ADVOCATE IN SR No. 88488.
+1 cc to Special Government Pleader, SR.No.88510.

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W.P. (MD) No.19942 of 2018
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