

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.2187 of 2018

K.Balraj

... Appellant

Vs

- 1.The Collector,
Cuddalore District.
- 2.The Revenue Divisional Officer,
Cuddalore.
- 3.The Tahsildar,
Panruti Taluk, Cuddalore District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 30.08.2017 in W.P.No.15353 of 2016.

Prayer in W.P.No.15353 of 2016:- Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to proceedings in No.Na.Ka.A1/1264/2008 dated 26.12.2014 and Na.Ka.A1/1264/2008 dated 10.10.2014 on the file of first respondent and quash the same and direct the respondents to give compassionate appointment to the petitioner.

For Appellant : Mr.M.S.Soundara Rajan

For Respondents : Mr.E.Manoharan
Additional Govt.Pleader

J U D G M E N T

[Delivered by M.SATHYANARAYANAN, J.]

By consent, this writ appeal is taken up for final disposal and is disposed of by this judgment.

2. The appellant is the petitioner in W.P.No.15353 of 2016 and he has filed the above writ said petition praying for issuance of a Writ of Certiorarified Mandamus, calling for the

records pertaining to the proceedings dated 26.12.2014 and 10.10.2014 on the file of the first respondent and quash the same with a consequential direction, directing the respondents to provide him compassionate ground appointment. The writ petition after contest came to be dismissed vide impugned order dated 30.08.2017 and aggrieved by dismissal of the said writ petition, the writ petitioner came forward to file this writ appeal .

3. A perusal of the materials placed before this Court would disclose the following facts:-

The father of the appellant was working as a Village Assistant at Eithanur Village and he died in harness on 20.07.2000 leaving behind four persons as his legal heirs viz., Tmt.Kasiammal (wife of the deceased and mother of the appellant), Thiru.K.Balamurugan, (elder brother of the appellant), Thiru.K.Balraj (appellant herein) and Thiru.K.Balasoundar (younger brother of the appellant).

4. The elder brother of the appellant viz., K.Balamurugan immediately after the demise of his father, had applied for compassionate ground appointment as his mother is an illiterate. However, no reply as to the consideration or non-consideration of the said request has been sent. In the meanwhile, the elder brother of the appellant became ill and therefore, the appellant had submitted a representation through his mother to the second respondent to provide him with compassionate ground appointment and her mother was informed by the second respondent vide proceedings dated 18.09.2004 in Na.Ka.A-4/7977/2004 that at the relevant time, there was a ban for compassionate ground appointment and therefore, the said application will be considered after lifting of the ban.

5. In the interregnum, unfortunately, the elder brother of the appellant viz., K.Balamurugan died on 06.05.2005 and therefore, the appellant had once again submitted applications dated 12.12.2006 and 09.07.2007, seeking compassionate ground appointment and responding to the same, the third respondent vide communication dated 19.10.2007, directed the appellant to submit ration card, 10th standard mark sheet and death certificate of his father and according to the appellant, all the certificates had also been forwarded.

6. The appellant expressed a grievance that seven years thereafter, the first respondent vide impugned communication dated 10.10.2014 had rejected the request made by the appellant on the ground that there is no provision to give compassionate ground appointment to another legal heir of the family and challenging the legality of the same, came forward to file the

writ petition. The said writ petition was entertained and the learned Judge after taking note of the judgment rendered by the Division Bench of this Court in *The Inspector General of Prisons v. P.Marimuthu* [2016 (5) CTC 125] , held that in the light of the legal principles laid down in the said judgment and considering the facts and circumstances of the case, the appellant/writ petitioner is not entitled for Compassionate Appointment and citing the said reasons had dismissed the writ petition vide impugned order dated 30.08.2017. Challenging the legality of the same, the present writ appeal is filed by the writ petitioner.

7. Mr.M.S.Soundararajan, learned counsel for the appellant/writ petitioner has invited the attention of this Court to the impugned proceedings of the first respondent and would submit, it is not as if another legal heir is seeking compassionate ground appointment, for the reason, it is only a case of substitution, as pending consideration of the application for compassionate ground appointment submitted by the elder brother of the appellant viz., K.Balamurugan, he died and thereafter, the appellant through his mother has submitted an application and in response to the same, the third respondent has also called for certain particulars and all the particulars have also been furnished and without passing orders for seven years, all of a sudden, the first respondent has passed the impugned order, rejecting the said request by stating untenable reasons and the learned Judge without going into the factual aspects, has applied the decision of the Division Bench and erroneously reached the conclusion to dismiss the writ petition and prays for interference.

8. Per contra, Mr.E.Manoharan, learned Additional Government Pleader, appearing for the respondents would submit that admittedly compassionate ground appointment is not a regular source of recruitment and such a kind of appointment is provided to tide over immediate financial crisis on account of the demise of the sole bread winner of the family. Admittedly, the father of the appellant died in harness as early as on 20.07.2000 and the writ petition came to be filed in the year 2016 and during the interregnum, the appellant was able to manage the affairs and as such, his request for compassionate ground appointment cannot be considered and the learned Judge has taken note of the same and has rightly rejected his request and prays for dismissal of this writ appeal.

9. This Court paid its anxious attention to the rival submissions and also perused the materials placed before it in the form of typed set of documents.

10. It is not in dispute that the father of the petitioner namely Mani @ Kuppusamy died in harness on 20.07.2000 while he was working as village Assistant leaving behind four legal heirs, which includes the appellant also. Originally, the elder brother of the appellant submitted an application for compassionate ground appointment as his mother was an illiterate and sick and pending consideration of the application, he died and therefore, the appellant submitted representations through his mother to consider his claim in the place of his elder brother for compassionate ground appointment to maintain the family and pending consideration of the said applications, the third respondent vide communication dated 19.10.2007 has also called upon the appellant to submit certain documents and all the documents have been furnished. However, no orders have been passed. It is also to be noted at this juncture that as per the communication of the second respondent dated 18.09.2004, the request made by the brother of the appellant for compassionate ground was not considered as there was a ban on recruitment and even after lifting of the said ban, no orders had been passed.

11. A perusal of the impugned order passed by the first respondent would also disclose that in view of Government Letter No.38454 dated 27.12.2007, there is no provision provided in the Government Rule for giving compassionate ground appointment to another heir of the deceased employee. In the considered opinion of the Court, the said reason assigned in the impugned order is wholly unsustainable for the reason that admittedly, the brother of the appellant had submitted application seeking compassionate ground appointment and he was informed about the ban on compassionate appointment and even after lifting of the ban, it appears from the materials placed, no communication has been sent either accepting or rejecting the said request and in the interregnum, his elder brother died on 06.05.2005.

12. In the considered view of the Court, the application submitted by the appellant for compassionate ground appointment is only by way of substitution and not a fresh application and though in the first paragraph of the impugned memo dated 10.10.2014, the said fact has been noted by the first respondent, he has reached the erroneous conclusion and therefore, this Court is of the view that the impugned order warrants interference. The learned Judge has placed heavy reliance on the judgment of the Division Bench to deny relief to the appellant. It is settled position of law that applicability of the judgment depends upon facts and circumstances of each case and in the case on hand, this Court has already reached the conclusion that the application submitted by the appellant is only by way of substitution and not a fresh application.

13. In the result, the appeal is partly allowed and the impugned order dated 30.08.2017 made in W.P.No.15353 of 2016 and consequently, the impugned proceedings dated 10.10.2014 and 26.12.2014 on the file of the first respondent are quashed. The first respondent is directed to re-consider the application submitted by the appellant seeking compassionate ground appointment on merits and in accordance with law especially taking into consideration the indigent circumstances of the family and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this judgment and communicate the decision taken to the appellant. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Collector,
Cuddalore District.

2.The Revenue Divisional Officer,
Cuddalore.

3.The Tahsildar,
Panruti Taluk, Cuddalore District.

+1 cc to M/s.M.S.Soundara Rajan, Advocate, S.R.No.5578

+1 cc to the Government Pleader, S.R.No.5799

MRL(CO)
SSM(21/02/2019) .

WA.No.2187 of 2018

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