



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.17914 OF 2019

G.Arun

...Petitioner

Vs.

The District Collector,
Vellore, Vellore District.

...Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to quash the proceedings of the respondent dated 27.01.2019 in Na.Ka.No.A5/14241/2016 and consequently direct the respondent to provide employment to the petitioner on compassionate grounds in a suitable post under the respondent.

For Petitioner .. Mr.R.Jai Kumar, for
M/s.T.Fenn Walter Associates

For Respondent .. Mr.K.K.Ramesh, AGP

ORDER

The petitioner's father was employed as a Village Assistant in Tamil Nadu Government Service and he died while in service on 04.02.2015. The petitioner's father had 2 wives and the petitioner was born from the second wedlock. According to the petitioner, his father married one Vanaja and got 2 sons, aged about 38 years and 35 years respectively. Thereafter, the father married the petitioner's mother and from the second wedlock two sons were born, one is the petitioner and the other is the younger brother.

2.The first wife's first son is working in CRPF and the second son is employed in Army and they were living separately. However, as regards the second wife's family, no one was employed including the petitioner and in view of the same, the family has been suffering by the loss of the only bread winner of the family, viz., the petitioner's father. According to the petitioner during the lifetime of his father, he was looking after their family and after his demise the family was placed



under indigent circumstances without any independent source of income. In the above circumstances, the petitioner applied for compassionate appointment, after getting No Objection from all the legal heirs of his deceased father. However, the application for compassionate appointment was rejected on 27.01.2019 on the ground that the request for compassionate appointment cannot be considered to the son of a second wife of the deceased employee in terms of the Government Order issued in this regard. The said order is put to challenge in the present writ petition.

3.Mr.R.Jaikumar, learned counsel appearing for the petitioner would submit that the rejection of the petitioner's request is on two grounds, one is that the first wife's sons were employed in Army and CRPF and the other reason is that the petitioner was son of the second wife and being illegitimate son, is only entitled to monetary benefits and not entitled to be considered for compassionate appointment. According the learned counsel, the Hon'ble Supreme Court of India has held that denying consideration of appointment to the second wife's son on compassionate ground is offensive to the dignity of the individual and is also offensive to constitutional guarantee against discrimination. The Hon'ble Supreme Court has held that the restriction imposed as such is arbitrary and ultra vires the Constitution. The Hon'ble Supreme Court decision was reported in 2019 (1) CTC 695 (SC) - Union of India and another vs. V.R.Tripathi.

4.On Notice, Mr.K.K.Ramesh, learned Additional Government Pleader entered appearance on behalf of the respondent and would submit that since the first wife's sons were adequately employed in Government Service, second wife's son is not entitled for compassionate appointment. Even otherwise, he being illegitimate son from an illegal wedlock, he is not entitled to be considered for compassionate appointment.

5.This Court is unable to countenance such arguments advanced on behalf of the respondent for the reason that the Hon'ble Supreme Court of India in the above mentioned decision has clearly held that the illegitimate children cannot be denied consideration for appointment on compassionate ground, as such denial would be offensive to the Equality Clause enshrined in the Constitution and the same is also ultra vires and arbitrary. Even otherwise, this Court is of the view that once illegitimate children are entitled to the monetary benefits, how the benefit for consideration for appointment on compassionate ground can be denied to the illegitimate children, like the petitioner herein. After all the ultimate consideration for appointment on compassionate ground is to provide immediate employment assistance to the family, which is placed in indigent circumstances. In this case, the authorities have to see whether



the family is in indigent circumstances, requiring employment assistance on the basis of the criteria to be adopted by the authorities in assessing the requirement of employment assistance for the family. Without ascertaining such details, it is not open to the authorities to simply reject the application of the petitioner for compassionate appointment on the stated grounds.

6. For the above said reasons, this Court does not think that the impugned order can be sustained for the reasons as assigned in the order and therefore the impugned order passed by the respondent in Na.Ka.A5/14241/2016, dated 27.01.2019, is set aside.

7. The respondent is directed to reconsider the request of the petitioner for compassionate appointment and ascertain if the family is otherwise in indigent circumstances, eligible for consideration for grant of such appointment. If the petitioner is found to be otherwise eligible, particularly in view of the No Objection given by the other legal heirs of the deceased employee, the appointment shall be granted to him on compassionate ground in any suitable post.

8. The respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of copy of this Order.

9. The writ petition stands allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

mrm/msk

To

The District Collector,
Vellore, Vellore District.

+1cc to M/s.T.Fenn Walter Associates, Advocate, S.R.No.67221
+1cc to the Government Pleader, S.R.No.68109

W.P.No.17914 of 2019

PPA(CO)
CS/01/10/2019