



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4183 of 2019

and C.M.P.No.25996 of 2019

The Executive Officer,  
Labbaikudikadu Town Panchayat,  
Labbaikudikadu,  
Kunnam Taluk,  
Perambalur District

.. Appellant

-vs-

1. B. Velankanni

2. The State of Tamil Nadu,  
Rep by its Secretary to Government,  
Municipal Administration and Water  
Supply Department,  
Chennai - 9.

3. The District Collector,  
Perambalur,  
Perambalur District.

4. The Assistant Director of Town Panchayat,  
Trichy Region,  
Collectorate Office,  
Trichy, Trichy District

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 18.12.2018 passed in W.P.No.32507 of 2018 on the file of this Court.

Prayer in WP:-Petitioner filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records connected in Na.Ka.No.190/2015 dated 21.06.2016 of the 4th respondent to quash the same and consequently direct the respondents to appoint the petitioner on compassionate grounds in any one of the suitable vacancy.

For Appellant

: Mr.V. Jayaprakash Narayanan  
Govt. Pleader

For Respondents

: Mr.K. Sanjay for  
Mr.G. Elanchezhian, for R-1



## JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant and the learned counsel for the respondent petitioner, who has put in appearance on instructions.

2.The writ appeal assails the impugned judgment dated 18.12.2018 and the stand taken by the State is that the respondent petitioner did not have vested right to claim appointment on compassionate basis, inasmuch as the Government had laid a ban on appointments and therefore, the post did not exist for any consideration of compassionate appointment of the respondent petitioner. This fact has been noticed by the learned Single Judge in paragraph 9 of the impugned judgment and the learned Single Judge thereafter has proceeded ahead to accept the claim of the respondent petitioner with a direction that the claim of the respondent petitioner ought to have been considered and therefore, refusing to grant compassionate appointment was set aside with a direction to provide compassionate appointment to the respondent petitioner by creating a supernumerary post.

3.Learned counsel for the appellant State contends that this direction could not have been given inasmuch as the Government Order in G.O.Ms.No.84, Municipal Administration and Water Supply (T.P.20 Department, dated 21.05.1998, on which reliance has been placed recites as under:

"2.Before issue of G.O.Ms.No.199, Municipal Administration and Water Supply Department dt.12.08.97, the legal heirs of deceased employees should be appointed on compassionate grounds in the vacant post on a regular time scale of pay. But when the consolidated pay employees die, compassionate appointment should be given to a legal heir only a consolidated pay."

4. It is the further contention of the learned Government Pleader for the appellant that since the ban on appointments was there, the post should have been treated to have vanished, as the sanction to the post had been revoked and therefore, there was no vacancy existing.

5.Learned counsel for the respondent petitioner, however, submits that when the husband of the respondent petitioner had died, he was continuing in the said post and therefore, the post was very much in existence on the date of death. It is urged that the right in favour of the answering respondent petitioner accrued immediately upon death of her husband and therefore, any



future action taken cannot divest her of her claim of compassionate appointment.

6. We have considered the submissions raised and we accept the contention of the respondent petitioner to the effect that the right to claim of compassionate appointment accrued immediately on the death of the husband of the respondent petitioner. On the said date, the post was very much available against which the husband of the respondent petitioner was working and therefore, it cannot be said that there was no vacancy available for the purpose of consideration of the claim of compassionate appointment as envisaged under Clause 3 (2) of the Government Order dated 21.05.1998.

7. However, the direction given by the learned Single Judge to create a supernumerary post is beyond the terms and conditions as contemplated in the Government Order referred to hereinabove.

8. We, accordingly, modify the impugned judgment of the learned Single Judge to the effect that the claim of the respondent petitioner shall be considered keeping in view the terms and conditions of the Government Order referred to hereinabove treating her claim to have accrued as on the date of death of her husband.

9. The Writ Appeal stands disposed of accordingly. There shall be no order as to costs. Consequently, C.M.P.No.25996 of 2019 of 2019 is closed.

Sd/-

Assistant Registrar (CS-V)

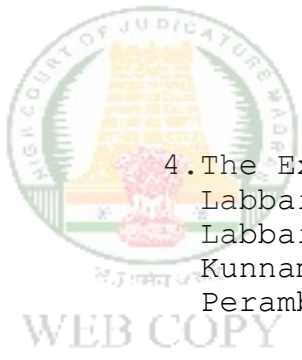
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Sub Assistant Registrar

sra

To

1. The Secretary to Government,  
State of Tamil Nadu,  
Municipal Administration and Water  
Supply Department, Chennai - 9.
2. The District Collector,  
Perambalur, Perambalur District.
3. The Assistant Director of Town Panchayat,  
Trichy Region, Collectorate Office,  
Trichy, Trichy District.



4.The Executive Officer,  
Labbaikudikadu Town Panchayat,  
Labbaikudikadu,  
Kunnam Taluk,  
Perambalur District.

W.A.No.4183 of 2019

RR(CO)  
GN(08/01/2020)