

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM

THE HON'BLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.28207 of 2017
and W.M.P.No.11225 of 2019

Mr.E.Sivaraman

... Petitioner

Vs

1.The Joint Registrar,
Office of the Joint Register of Cooperative Societies
Dharmapuri Region
No.64, Appavoo Nagar,
Dharmapuri 636 701.

2.The Assistant Executive Engineer,
Construction Sub-Division (I.C.T.P)
Cooperative Societies, Dharmapuri.

... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Mandamus to mandate the respondent to provide job opportunity to the petitioner on compassionate grounds.

For Petitioner: Mr.N.Suresh
For Respondents: Mrs.T.Girija
Government Advocate (Cooperative)

O R D E R

The petitioner has come forward with the prayer seeking compassionate appointment. The case of the petitioner is that his father died on 06.12.1997 and that as there was a rift between his father and mother, his mother was living separately and that the petitioner was residing with the father and taking care of his father and he stated that the petitioner's father died on 06.12.1997 and the petitioner has made an application on 27.09.2012 within the period of three years from the date of death of his father. According to him, he has got two children and that he has fully qualified to be considered to be appointed on compassionate ground.

2. It is further pointed out by the learned counsel for the petitioner that the Government has given a detailed letter dated 25.02.1994 stating that if one of the family members other than the deceased Government servant was employed before the death of the Government servant and was living separately without extending any help to the family, then the case of the other dependents may be considered. Hence in view of this, as the mother of the petitioner was living separately, the petitioner would be entitled to the relief.

3. The respondent has filed the counter affidavit in detail and the sum and substance of the counter affidavit is that it is incorrect to state that the petitioner was living separately and the petitioner and his mother are living together and the address provided by the petitioner bearing Door No.13 A, Panakkaara Street, Pudupet, Krishnagiri is incorrect and on enquiry, it was found that the petitioner was not residing in that house. He further stated that there is a delay in making a claim and hence, he would not be entitled for any relief. Since the petitioner's mother was employed in a Government job at the time of demise of his father and she was a Teacher in a Government School, the petitioner would not be entitled to any relief. According to them, false information has been given by the petitioner and the petitioner has not produced any Ration Card or any other document to prove that he is residing in the above said address. Hence the request of the petitioner for compassionate appointment was not considered and therefore, rejected the application.

4. Heard both sides.

5. It is not in dispute that the petitioner's father died on 06.12.1997 and the petitioner had made the application on 27.09.2000 and also made several representations seeking compassionate appointment. The petitioner has produced the Legal Heir Certificate of the deceased father that contains the name of the sisters also. Any one of the legal heirs is entitled to compassionate appointment. If the case of the petitioner is accepted, then it is not necessary that job should be given only to the petitioner. In any event, the petitioner has not produced any evidence to show that he was residing in the address in Door No.13 A, Panakkaara Street, Pudupet, Krishnagiri. The clause referred in the communication dated 25.02.1994 may not be applicable to the facts of this case, more particularly to the case of the petitioner.

6. What it means was that the earning member of the family was living separately, on the demise of the earning member, any other person may be considered for Government Job. When this Court posed question whether any judicial proceedings or divorce case between the father and the mother, the petitioner responded that due to misunderstanding they were living separately. On the

other hand, the respondents would submit that mother and the son were living together. The petitioner has also made other legal heirs as party to the proceedings, out of which one is a minor.

7. The compassionate appointment cannot be claimed as a matter of right. Merely because the petitioner is a married person, having 2 children, it cannot be a ground to grant compassionate appointment.

8. The Apex Court in the decision reported in 2014 (1) LLN 515 (Mad) [R.Kanagasanthi Vs. Tamil Nadu Civil Supplies Corporation, Chennai-10 and another and it is relevant to extract paragraph no.13 of the judgment, wherein, I have followed the judgment of the Hon'ble Supreme Court of India:

'14.As far as the decision reported in State Bank of India v. Raj Kumar (2010) 11 SCC 661 relied on by the learned Additional Government Pleader is concerned, the Hon'ble Apex Court, while considering the case of compassionate appointment for the dependent of the deceased employee, who died on 01.10.2004, has held that the heirs are entitled to the benefits of the new scheme for getting lump sum ex-gratia payment. However, the Hon'ble Apex Court has further held that compassionate appointment under the scheme cannot be given vested right and the scheme that is in force when the application was actually considered, and not the scheme that was in force earlier, when the application was made, will be applicable. By referring to its another Judgment, the Hon'ble Apex Court has further held that there can be an exception to the rule when the right had already accrued and vested with the applicant, before change of policy. Hence, as far as the case of the petitioner herein is concerned, I am of the view that the Corporation has considered the request of the petitioner for compassionate appointment and as extracted supra, the 1st respondent has admitted that immediately after the demise of the petitioner's father, an application was made and it has been deferred only on the ground that there was a ban on appointments and hence after lifting the ban, the petitioner should be put back and given the benefits. If the petitioner had applied for compassionate appointment, after the change in policy on 05.04.2007, this Court would have dismissed the writ petition on the ground of delay and also on the ground that even though his father had died during the time when the old scheme was in force for appointment on compassionate grounds, the application has been made after the new scheme has come into force. But, these two grounds are not available for rejecting the case of the petitioner as the application has been made within time

the application has been made prior to the coming into force of the new scheme/policy on 05.04.2007. The respondents having kept quiet in not providing employment on compassionate appointment, may be due to the genuine reason on the ground of ban on compassionate appointment, now, passing the impugned order, rejecting the application of the petitioner, is not only unwarranted but also unjustified and it smacks victimization and a clear case of discrimination and arbitrariness.''

9. If the case of the petitioner is accepted, it will be a bad precedent. It is also represented that the mother of the petitioner subsequently retired and died on 30.04.2013, but that cannot be gone into in this present writ petition. Hence I am not inclined to grant relief sought for by the petitioner and accordingly, this writ petition is dismissed. No costs. Consequently the connected writ miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CJ Conf)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Registrar,
Office of the Joint Register of Cooperative Societies
Dharmapuri Region
No.64, Appavoo Nagar,
Dharmapuri 636 701.

2.The Assistant Executive Engineer,
Construction Sub-Division (I.C.T.P)
Cooperative Societies, Dharmapuri.

+1cc to Government Pleader(Co-Op) SR.NO. 68489
+2cc to Mr.N.Suresh, Advocate SR.NO. 67990

W.P.No.28207 of 2017

sv(co)
nr 31/10/2019