

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 21.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.22544 of 2008

A.Elumalai ... Petitioner

Vs

1.State of Tamil Nadu,
Rep. by Secretary,
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai.

2.Director of Town Panchayats,
Kuralagam,
Chennai.

3.The Assistant Director,
Town Panchayats,
Cuddalore.

4.The Executive Officer,
Marakanam Town Panchayat,
Marakanam,
Villupuram District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the Respondents to regularise the services of the Petitioner's father namely, Mr.A.Avani.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.G.K.Muthukumar

Spl. G.P. for R1 to R3

Mr.R.S.Selvam G.A. for R4

O R D E R

The Petitioner is the son of the late Mr.A.Avani who worked as a Pump Operator in the Marakanam Town Panchayat and died in harness on 15.06.2000. The death of the Petitioner's father occurred during the course of his employment and it appears that he slipped into the water tank while opening a valve in order to release water. At the time of his father's death, the Petitioner was about 11 years old.

2. Subsequently, he completed the 12th standard and thereafter requested the Respondents for employment in the Marakanam Town Panchayat on compassionate grounds. For this purpose, he issued a lawyer's notice dated 18.06.2007 and thereafter filed W.P.No.36651 of 2007 for a writ of mandamus to consider the name of the Petitioner for the post of Junior Assistant on compassionate grounds. The said writ petition was disposed of by order dated 13.03.2008 by directing the Respondents to consider and dispose of the demand made by the lawyer's notice dated 18.06.2007 on merits within a period of eight weeks from the date of receipt thereof. By impugned order dated 01.04.2008, the request for compassionate appointment was rejected on three grounds. First, that the Petitioner's father worked as a Pump Operator between 01.10.1992 and 15.06.2000 on daily wages and not in a sanctioned post. Secondly, that workmen's compensation was paid pursuant to the order dated 13.12.2002 of the Assistant Commissioner, Labour-II, in an aggregate sum of Rs.2,18,924/-. Thirdly, that the Petitioner's father was employed on a contingent, daily wage basis and, therefore, the Government orders do not permit compassionate appointment to the Petitioner. The present writ petition was filed in these facts and circumstances.

3. After the writ petition was filed, the Petitioner filed a petition to amend the prayer and the said petition was allowed by order dated 05.11.2008. The amended prayer is for a writ of mandamus to direct the Respondents to regularise the services of the Petitioner's father, Mr.Avani.

4. I heard Mr.K.M.Ramesh, the learned counsel for the Petitioner; Mr.G.K.Muthukumar, the learned Special Government Pleader for the Respondents 1 to 3; and Mr.R.S.Selvam, the learned Government Advocate for the 4th Respondent.

5. Mr.K.M.Ramesh submitted that the Petitioner's father provided services for a period of 7 years 8 months and 14 days as a Pump Operator to the Marakanam Town Panchayat. In view of the fact that he died while engaged in his duties, his family received compensation under the Workmen's Compensation Act. The payment of such compensation cannot be the basis to either deny regularisation or compassionate appointment. The learned counsel also relied upon G.O.Ms.No.52 dated 14.01.1977 and G.O.Ms.No.107 dated 05.02.1987 whereby all the heads of the Department were directed to regularise the services of the daily rated/casual/temporary/contract/consolidated employees working in the various departments for more than five years. According to Mr.Ramesh, the said Government orders should have been followed by the Respondents. Instead, the Respondents relied upon G.O.Ms.No.560 dated 03.08.1977 and G.O.Ms.No.1243 dated 23.05.1980 in order to reject the claim of the Petitioner. In effect, the contention of Mr.Ramesh is

that the 4th Respondent was obligated to regularise the services of the Petitioner's father and if his services had been regularised, the Petitioner would be entitled to appointment on compassionate ground.

6. In support of the aforesaid submissions, the learned counsel referred to and relied upon the judgment of the Full Bench of this Court in Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai. v. V.Marisamy and others, 2017 (3) CTC 673. In the said judgment, the Full Bench considered G.O.Ms.No.101 dated 30.04.1997 and G.O.Ms.No.71 dated 05.05.1998 which provided for the regularisation of sanitary workers who have completed the mandatory period of service on consolidated pay. Upon interpreting the said Government orders, the Court held that persons employed as sanitary workers and covered by G.O.Ms.No.101 dated 30.04.1997 and G.O.Ms.No.71 dated 05.05.1998 are entitled to be regularised after the completion of the specified period under consolidated pay as specified in the Government orders from the date of their initial appointment. On the above basis, Mr.Ramesh concluded his submissions by reiterating that the services of the Petitioner's father should be regularised on the basis of the above mentioned Government orders.

7. On the contrary, the learned Special Government Pleader submitted that the Petitioner's father is not entitled to regularisation as per the applicable Government order. The Government issued G.O.Ms.No.198, Municipal Administration and Water Supply(Na.Pa.3) Department dated 26.10.1998 (G.O.Ms.No.198) whereby norms were prescribed for the creation of new posts in water supply maintenance. G.O.Ms.No.198 specified the educational qualifications and the consolidated monthly wages, including the annual rate of increment, as regards the posts referred to therein, including pump operators. It also prescribed the conditions subject to which such appointments should be made. Pursuant thereto, he pointed out that the Director of Panchayat by proceedings dated 31.07.2000 sanctioned the post of pump operator subject to the terms and conditions specified in the said proceedings. The said conditions, inter alia, prescribe that those who had been selected through the employment exchange prior to 31.12.1996 or those who had registered with the employment exchange but were not selected should be given priority. Additionally, the appointment should be for an initial period of one year, which would be subject to renewal, and conditional on satisfactory performance, renewal may be for a term of three years. After evaluating the performance over the said three year period, the appointment may be regularised by putting the appointee on a time scale.

8. Thus, Mr.Muthukumar pointed out that the proceedings dated 31.07.2000 stipulate a complete process

which should be adhered to before a pump operator is regularised. As regards the Petitioner's father, he expired on 15.06.2000, i.e. even before the proceedings dated 31.07.2000 were issued under authority of G.O.Ms.No.198. Nonetheless, he contends that the Petitioner's father is not entitled to regularisation as per the norms specified in the proceeding dated 31.07.2000 irrespective of the date of death of the Petitioner's father. He also relies upon the judgment of the Hon'ble Supreme Court in Secretary to Government, School Education Department, Chennai. v. R.Govindaswamy and others (2014) 4 SCC 769 and Secretary to Government, Commercial Taxes and Registration Department v. A.Singamuthu, Civil Appeal No.3770 of 2017, wherein the Hon'ble Supreme Court relied upon the Constitution Bench judgment in State of Karnataka v. Umadevi (2006) 4 SCC 1 (Umadevi) and State of Rajasthan and Others v. Daya Lal and others (2011) 2 SCC 429. In all these judgments, the Hon'ble Supreme Court concluded that persons who were appointed to an unsanctioned post or on daily wage/consolidated pay/contract basis are not eligible for regularisation as a matter of right because such regularisation violates the rights of those who apply through proper channels and, consequently, infringes Article 14 and 16 of the Constitution.

9. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

10. The limited question that arises for consideration is whether the Petitioner's father is entitled to regularisation. The admitted position is that the Petitioner's father was employed on a daily wage basis as a Pump Operator of the Marakanam Town Panchayat. He died in harness on 15.06.2000. From G.O.Ms.No.198 dated 26.10.1998, it is clear that norms were fixed for the creation of sanctioned posts as regards the drinking water maintenance work for the panchayats. In specific, as regards Pump Operators, the educational qualification of 8th standard and the consolidated monthly pay of Rs.600/- with annual increment of Rs.50/- was fixed. In addition, the said Government order specified conditions to the effect that a new appointee should be appointed initially for a period of one year and, thereafter, such appointment should be renewed and that a three year term should be given after assessing the performance of the employee. Upon completion of the said three year period, once again, the performance should be evaluated before putting the employee on a time scale. The proceedings dated 31.07.2000 were issued pursuant to the norms fixed in G.O.Ms.No.198. Consequently, the above mentioned conditions have been carried forward and incorporated in the proceedings dated 31.07.2000.

11. As contended by the learned Special Government Pleader, the regularisation claim would be subject to and conditional upon compliance with the conditions specified in G.O.Ms.No.198. Although Mr.K.M.Ramesh relied upon the

Full Bench judgment of this Court, I find that the said judgment pertained to G.O.Ms.No.199 and G.O.Ms.No.71, which deal with sanitary workers. Therefore, the said judgments cannot be applied in the specific context of Pump Operators in the Panchayats. In addition, the Constitution Bench of the Hon'ble Supreme Court in Umadevi held categorically that persons who are not appointed to a sanctioned post and have been appointed without adhering to prescribed procedures should not be regularised as doing so would violate Articles 14 and 16 of the Constitution. The said judgment has been followed thereafter in several judgments of the Hon'ble Supreme Court which had been cited by the learned Special Government Pleader.

12. For reasons aforesaid, I find that the Petitioner has failed to make out a case as regards regularisation. Even with regard to the request for compassionate appointment, the law is well settled that it is not an alternative method of employment but a method of providing immediate succour to a family in distress on account of the loss of the earning member of the family. Given the delay in applying for compassionate appointment, in any event, the Petitioner's claim for compassionate appointment would be tenuous.

13. As such, the writ petition is liable to be and is hereby dismissed. No costs.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai.
2. Director of Town Panchayats,
Kuralagam,
Chennai.
3. The Assistant Director,
Town Panchayats,
Cuddalore.

4.The Executive Officer,
Marakanam Town Panchayat,
Marakanam,
Villupuram District.

+1cc to Mr.K.M.Ramesh , Advocate SR.No. 42172
+1cc to Mr.R.S.Selvam , Advocate SR.No. 42467
+1 cc to Government Pleader Sr.No. 42614

W.P.No.22544 of 2008

A.SK(20.01.2021)



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