

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WP.No.29753 of 2008
and
MP.No.1 of 2008

A.Nagarajan (deceased)

P-2 N.Vijaya

P-3 N.Sandiya

P-4 N.Anandan

P-5 N.Surya

... Petitioners

(P2 to P5 are substituted as LRs of the deceased
sole petitioner as per order dated 20.12.2019 made
in MP.No.2 of 2015 in WP.No.29753 of 2008)

Vs.

The Deputy Director of Public Health
and Preventive Medicine,
Institute of Public Health,
Poonamallee, Chennai - 56.

... Respondent

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified
Mandamus calling for the records of the respondent culminated in
the impugned termination order in Rc.No.1597/P1/85 dated
04.08.2008 and quash the said order and entire proceedings there
under against the petitioner and reinstate the petitioner in
service as a Mazdoor, in the respondent department forthwith
along with all attendant and monetary benefits and continuity of
service.

For Petitioners: Mr.B.Balachander

For respondent : Mr.P.Chinnadurai,
Additional Government Pleader

O R D E R

The deceased Nagarajan is the husband of the second petitioner, father of the third, fourth and fifth petitioners. He was appointed as a Mazdoor at the Institute of Public Health, Poonamallee on 14.03.1986, pursuant to the death of his mother. From the facts, it is seen that the father, mother and brother of the deceased were all appointed as Mazdoors at the very same Institute. After the death of his mother, he was appointed as a Mazdoor in that Institute. After putting in about 22 years of service, he was terminated from his service on the ground that he suppressed the employment of his brother before getting compassionate appointment. Challenging the termination, the deceased Nagarajan filed the above Writ Petition. During the pendency of the Writ Petition he died in the year 2014 and the present petitioners are impleaded to contest the above Writ Petition.

2. The learned Government Advocate appearing for the respondent relying on the counter affidavit would contend that the deceased has suppressed the employment of his brother at the time of getting appointment on compassionate ground and had he disclosed that, he would not have been given appointment. Since the appointment was obtained by suppressing the facts, in view of G.O.Ms.No.560, Labour and Employment Department dated 03.08.1977, he was terminated from service.

3. Heard the rival submissions and perused the materials placed before this Court.

4. The admitted fact remains that the deceased was appointed on compassionate basis on the death of his mother. At the time of appointment, his brother was also employed as a Mazdoor in the very same Department. As per G.O.Ms.No.560 Labour and Employment Department, dated 03.08.1977, it is the responsibility of the official respondents to satisfy themselves about the indigent circumstances of the family before the appointment is offered on compassionate ground. When another member of the family is in employment, it could be said that the family is not in indigent circumstances and that particular person can support the family. In the instant case, it is stated that, at the time of making application, the deceased has suppressed that his brother was employed as a Mazdoor in the very same Department. It is also relevant to state that his father, mother and brother are all working as Mazdoors in the very same Department. In that event, when the application is made, it is obvious that the Authorities in the Department must be aware of their employees, even assuming that the deceased persons's brother is employed at the time of applying for the post on compassionate ground. The appointment cannot be denied

only on that basis. The main criteria for offering employment to the dependants of the Government employee is that the family should be living in indigent circumstances. The duty is cast upon the official respondents to satisfy themselves as to whether the family is living in indigent circumstances or not. For that purpose, there are field officers who will visit and enquire the house of the deceased Government employee as well as their neighbours to ascertain the financial position of the family. If such inspection is done, it would have come to light that the other family members of that house were also employed. It is also relevant to state that if that family member is living independently and is not supporting the family of the deceased employee, there can be appointment on compassionate basis.

5. In fact, the Government has issued a letter in Memo No.34107/N1/77-1, dated 04.05.1978, wherein it is stated that even if an earning member is in the family, if in the opinion of the Appointment Authority, a family is in indigent circumstances, appointment can be made on compassionate basis to one more dependant of the deceased Government servant. Therefore, legally there is no bar to appoint one of the dependant on compassionate basis, even if an earning member is in the family. What is to be taken into consideration is that whether the family is living in indigent circumstances or not. The respondent has considered the indigent circumstances of the family and offered an appointment to the deceased Nagarajan. In that event, it cannot be called as an illegal appointment. Admittedly, the deceased was appointed on 14.03.1986 and he had put in two decades of service. His service could have been regularised but he was terminated on 04.08.2008 for the reason that he has suppressed the fact that his brother was employed in the very same Department. I do not find any materials for arriving at such a conclusion after a period of 22 years of appointment on compassionate basis. Even assuming that there is one member already employed as a Mazdoor, such last grade servant cannot get huge salary to support the entire family. The salary given to the temporary Mazdoor will not be enough even to support his own family. Another appointment as a temporary Mazdoor on compassionate ground cannot be said to be irregular. In fact, the officials could have ascertained and satisfied about the indigent circumstances of the family, at that point of time. Without any material evidence, the order passed by the respondent terminating the deceased from service at the verge of his retirement is highly arbitrary and illegal.

6. Moreso, in similar circumstances, the order of the very same Authority was set aside by this Court in WP.No.29754 of 2008 dated 26.02.2014 on very same grounds. This Court has found that if the appointment was terminated within a reasonable

period of appointment, the petitioner would have sought for some other employment and would have settled in his life. But terminating a person after long years of service is illegal and arbitrary. I do concur with the view of the Hon'ble Single Judge. The Hon'ble Supreme Court of India in the case of Union of India and others vs. K.P.Tiwari reported in (2003) 9 SCC 129 has categorically held that it would not be appropriate to disturb the appointment of the petitioner therein and to uproot his livelihood. Therefore, I am of the view that the termination order issued by the respondent in proceedings Na.Ka.No.1597/P/85, dated 04.08.2008 is not sustainable in law and is liable to be set aside. The petitioner was 57 years old at the time of filing the Writ Petition. In view of the same, this Court directs the respondent that the terminal benefits due to the deceased Nagarajan shall be disbursed to his legal heirs within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed. The order passed by the respondent in proceedings Na.Ka.No.1597/P/85, dated 04.08.2008 is quashed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mbi

To
The Deputy Director of Public Health
and Preventive Medicine,
Institute of Public Health,
Poonamallee, Chennai - 56.

+2ccs to M/s.Ashok menan, Advocate, Sr.No. 3994
+1 cc to The Government Pleader, Sr.No. 4360

WP.No.29753 of 2008
and
MP.No.1 of 2008

GJ(CO)
RMP(03/11/2020)