

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.11188 of 2014

and

M.P.Nos. 1 &2 of 2014

M.Vijaya

...Petitioner

vs.

1. Government of Tamil Nadu,
Rep. By its Secretary to Government,
Municipal Administration & Water Supply Department,
Fort. St George,
Chennai -600 009.

2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

3. The Zonal Officer,
Chennai Corporation Zonal-14,
NO.16/64, Puzhithivakkam,
Chennai 600 091.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus after calling for the records relating to the order bearing No.M.A-14, Na.Ka.No.A3/5232/2013 dated 24.10.2013 and the order No.M.A-14 Na.Ka.No.A3/9854/2013 dated 22.01.2014 passed by the 3rd respondent quash the same and consequently direct the respondents to appoint the petitioner on compassionate grounds and grant all the benefits due including the Group Insurance, award costs.

For Petitioner : Mr.G.K.Tamilarasan

For Respondent(s) : Mr.S.Thangavel, Spl.G.P for R1

: Mr. R.Gopinath, SC for RR2 & 3

ORDER

This writ petition has been filed by the petitioner, to call for the records relating to the order bearing No.M.A-

14, Na.Ka.No.a3/5232/2013 dated 24.10.2013 and the order No.M.A-14 Na.Ka.No.A3/9854/2013 dated 22.01.2014 passed by the 3rd respondent quash the same and consequently direct the respondents to appoint the petitioner on compassionate grounds and grant all the benefits due including the Group Insurance, award costs.

2. According to the petitioner, her husband late R.Manivel was employed as a full time office Assistant cum Bill Collector in Kottivakkam Panchayat under the Rural Development Department, which comes under control of the 1st and 3rd respondents. Her husband joined in service on 01.05.1955, while in service he died due to cancer on 10.04.2013, leaving behind her and his two minor children along with his mother-in law as his legal heirs. After demise of her husband, she made an application to the 3rd respondent requesting them, to grant her appointment on compassionate grounds and also requested them to grant of Rs.1,50,000/- under the Group Insurance and Family Welfare Scheme. The grievance of the petitioner is that the 3rd respondent denied her requests on the grounds that her husband worked on a temporary post and that he was not a regular employee. Aggrieved against the rejection of her request, the petitioner is before this court with the present writ petition.

3. Learned counsel for the Petitioner contended that, though the petitioner claim employment opportunity on compassionate grounds, in a similar circumstance, one Kalaiselvi, who is the wife of a deceased temporary employee was given employment on compassionate ground, however rejection of the Petitioner's request for compassionate appointment on the ground that, her deceased husband was only working as a temporary employee, is unacceptable. Learned Counsel further submitted that the contribution towards Group Insurance is deducted only for a permanent employee. In this case, her husband was a member of the Group Insurance Scheme and therefore on his death, the Petitioner is eligible to receive the Group Insurance benefits of her deceased husband and further she is entitled to get employment on compassionate appointment, because her husband has served as daily wages for several years, for which there is no scheme for providing compassionate appointment is unsustainable one. It is further stated by the learned counsel that, as per section 3(i) the Tamil Nadu Industrial Establishment Conferment of

Permanent Status to Workmen) Act, 1981, the petitioner's husband should have been conferred permanent status inasmuch as he had put in 480 days of service within a period of 24 calendar months and he further submitted that the claim of the petitioner is supported by the various judgments of this Court which have held that the Dependents are entitled to be considered for compassionate appointment especially when the deceased has put in long number of years as a temporary worker and was not the threshold of being made permanent and as per the G.O.Ms.NO.22 dated 28.02.2006, the government considered the services of the temporary employees who have completed ten years of service in the respective Department, are entitled to regularization of service. Accordingly he prays for allowing the petition with the above said prayer.

4. Learned counsel appearing for the Respondents submitted that, the Petitioner's husband was working as a daily-rated employee in Chennai Corporation. According to the learned counsel, there is no scheme to provide appointment on compassionate ground to the legal heirs of a deceased daily-rated employee and hence, the relief sought by the Petitioner cannot be granted.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. The facts in the present case is not disputed one. Admittedly the purpose of providing employment on compassionate basis is to mitigate the hardship of the family which has arisen due to the death of the employee and such appointment therefore has to be provided immediately to ensure that the family tide over the sudden crisis which has arisen due to the death of the employee. The dependent of a deceased employee cannot be permitted to convert a tragedy into a bonanza. If the compassionate appointment is treated as one more source of recruitment, then it will be violative of Article 16 of the Constitution of India. It is settled by various decisions of the Hon'ble Supreme Court, an appointment on compassionate basis is a concession given by the employer to help the family of the deceased who has died in harness to get over the immediate financial crisis. The scheme under which compassionate appointment can be given has to be construed strictly. As per G.O.Ms.No.22 dated 28.02.2006, the Government directed the services of the daily wage employees working

in all the Government Department, who have rendered 10 years of service in the respective Department, are entitled to regularization of service. In the case on hand, the Petitioner's husband died in harness, before he could complete ten years of service in the Chennai Corporation. Further, this Court perused the order dated 03.01.2013 produced by the Petitioner, which pertains to the temporary appointment order issued to one similarly placed Kalaiselvi, the said appointment is not on compassionate ground. Further this Court finds that an order dated 03.01.2013 has been produced by the petitioner, which pertains to the temporary appointment issued to one Kalaiselvi. It is the claim of the petitioner that the said Kalaiselvi's husband passed away and, thereafter, Kalaiselvi was engaged. However, a perusal of the order reveals that the said Kalaiselvi was appointed on temporary daily-rated basis and not given compassionate appointment. Hence, the claim of the petitioner for regularization on par with the said Kalaselvi does not arise. In this regard, it is represented by the learned counsel appearing for the Respondents that, order of regularization of a temporary employees has to be granted only by the State Government and that, Corporation of Chennai has no powers to order regularization of service of daily-rated employees. Further, regularization is within the discretion of the employer which is to be in consonance with the various Government Orders and the scheme framed by the corporation. Hence in the above backdrop, this Court cannot issue a direction to the respondent Corporation to absorb or regulate the services of the petitioner. In view of the above such backdrop, this Court does not find any merits, accordingly, it is liable to be dismissed.

7. Thus, in view of the foregoing reasons, this Writ Petition stands dismissed as devoid of merits. However, this order will not stand in the way of the petitioner to claim the benefits under the Group Insurance Scheme, if her husband had contributed to the Group Insurance Scheme and if the petitioner is entitled to the same, the respondents are directed to settle the benefits to the petitioner within a period of eight weeks from the date of receipt of copy of this order. However in the said circumstance, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jrs

To

1. Secretary to Government of Tamilnadu,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.
3. The Zonal Officer,
Chennai Corporation Zonal-14,
No:16/64, Puzhithivakkam,
Chennai - 600 091.

+1cc to Mr.G.K.Tamilarasan, Advocate, SR37297

+1cc to Mr. R.Gopinath, Advocate, SR37072

+1cc to Government Pleader, SR37185

W.P.No.11188 of 2014

CO (PM)

BDL(19/12/2020)

सत्यमेव जयते

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