

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.31481 of 2014

G.Balaganapathi

...Petitioner

Vs.

1. The District Collector,
Ariyalur District,
Ariyalur.

2. The Revenue Divisional Officer,
Ariyalur Division,
Ariyalur.

3. The Tahsildar,
Ariyalur Taluk,
Ariyalur District.

...Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the District Collector, Ariyalur District, Ariyalur, the first respondent herein vide his proceeding No.Na.Ka.A3/3010/2013 dated Nil.12.2013 and signed on 2.01.2014 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondents to provide appointment to the petitioner on compassionate grounds in any suitable post commensurate with his qualification, consequent on the death of his father on 8.8.2002 while in service under the respondents.

For Petitioner : Mr.A.R.Suresh
For Respondents : Mr.S.Thangavel
Special Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the District Collector, Ariyalur District, Ariyalur, the first respondent vide his proceedings No.Na.Ka.A3/3010/2013 dated Nil.12.2013 and signed

on 02.01.2014 and to quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondents to provide appointment to the petitioner on compassionate grounds in any suitable post commensurate with his qualification, consequent on the death of his father on 08.08.2002 while in service under the respondents.

2.The case of the petitioner is that the petitioner's father was working as Village Assistant at Periya Thirukonam Village, Ariyalur Taluk, Ariyalur District and he died on 08.08.2002, while he was in service. Since the petitioner was a minor at that time, the petitioner's mother made application for appointment to the petitioner on compassionate grounds on 04.04.2005. Thereafter, on attaining the age of majority, the petitioner made several representations seeking appointment on compassionate grounds and the last of such representation was made on 04.04.2013, however, vide the impugned order, the petitioner's claim was rejected by the first respondent. Hence, this writ petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner's claim for appointment on compassionate appointment was rejected by the first respondent on the ground that the petitioner was born to the deceased Government servant through his second wife. He would further submit that the first wife of the petitioner's father, namely, Gunavathi, deserted him long back and married another man and is living with him. Further, the female child born to the petitioner's father and his first wife was brought up by the petitioner's father and mother and they also performed her marriage.

4.The learned counsel appearing for the petitioner would further submit that during the enquiry conducted by the Head Quarters Deputy Tahsildar, Ariyalur, the said Gunavathi stated that she has no objection for granting the death cum retirement benefits to the petitioner's mother and the other legal heirs. He would further submit that the female child born to the petitioner's father through his first wife has also given no objection for giving employment to the petitioner.

5.The learned counsel appearing for the petitioner would further submit that initially the petitioner's mother made application for appointment to the petitioner on compassionate grounds within a period of three years from the date of death of the petitioner's father. However, legal heir certificate had to be obtained and hence, after attaining the age of majority, the petitioner gave representation seeking appointment on compassionate grounds. Hence, the application is not a

defective one. He would further submit that since the female child born to the petitioner's father through his first wife has also given no objection for giving employment to the petitioner, the impugned order is un-sustainable one. Accordingly, he prayed for allowing the writ petition. The learned counsel also relied upon the decision of this Court reported in (2004) 4 M.L.J. 177 (Geetha Ramani Vs. The District Educational Officer, Kancheepuram and others).

6.The learned Special Government Pleader would submit that the purpose of giving appointment on compassionate grounds is to provide immediate financial assistance to the family of a Government servant who dies in harness, when there is no other earning member in the family. However, in the present case, there is no reference to the application alleged to have been made by the petitioner's mother in the impugned order. Further, legal heir certificate was issued in the year 2006, however, the petitioner made representation only during the year 2013. Hence, the representation itself is a defective one. Accordingly, he prayed for dismissal of the writ petition.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.Perusal of records disclose that during the enquiry conducted by the Head Quarters Deputy Tahsildar, Ariyalur, Gunavathi/ the first wife of the petitioner's father has stated that she has no objection for granting the death cum retirement benefits to the petitioner's mother and the other legal heirs. Further, the female child born to the petitioner's father through his first wife and the other legal heirs have also given no objection for giving employment to the petitioner.

9.It is also useful to extract hereunder the relevant portion of the the decision of this Court reported in (2004) 4 M.L.J. 177 (Geetha Ramani Vs. The District Educational Officer, Kancheepuram and others), which reads as follows:

"6.In the present case, the Tribunal has not at all considered the effect of Section 16 of the Act. In view of the provisions contained in Section 16 of the Act, there cannot be any doubt that the child born through the second wife, even though such marriage was void, shall be deemed as the legitimate child. Even there is nothing in the G. O. which says that only a child born in a lawful marriage would be considered as beneficiaries. In the absence of any specific provision and particularly, keeping in view the intention of Parliament, as

reflected in Section 16 of the Act, we have no doubt in our mind that the benefit of G.O. is also available to the children born out of the void marriage. Our aforesaid view also receives support from the decision of the Apex Court in RAMESHWARI DEVI v. STATE OF BIHAR (2000 (2) SCC 431).

7.The intention under the G.O. issued for employment on compassionate ground is to give protection to the members of the family of the deceased employee. By no stretch of imagination, it can be stated that the children born through the second wife, even though the second marriage is void, are not members of such family. Having regard to all these aspects, we quash the order passed by the Tribunal and quash the order of termination. Accordingly, the writ petition is allowed. It would be deemed that the petitioner is restored in service from 1.7.2002. However, in the facts and circumstances of the case, she would be entitled to 50% of the wages for the aforesaid period."

10.In view of all the above, this Court is inclined to set aside the impugned order. Accordingly, the impugned order dated Nil.12.2013 and signed on 02.01.2014 is set aside and the matter is remanded back to the first respondent for fresh consideration. The first respondent is directed to consider the representation made by the petitioner seeking appointment on compassionate grounds afresh, on merits and in accordance with law, except the ground mentioned in the impugned order, and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order.

11.The writ petition is accordingly disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

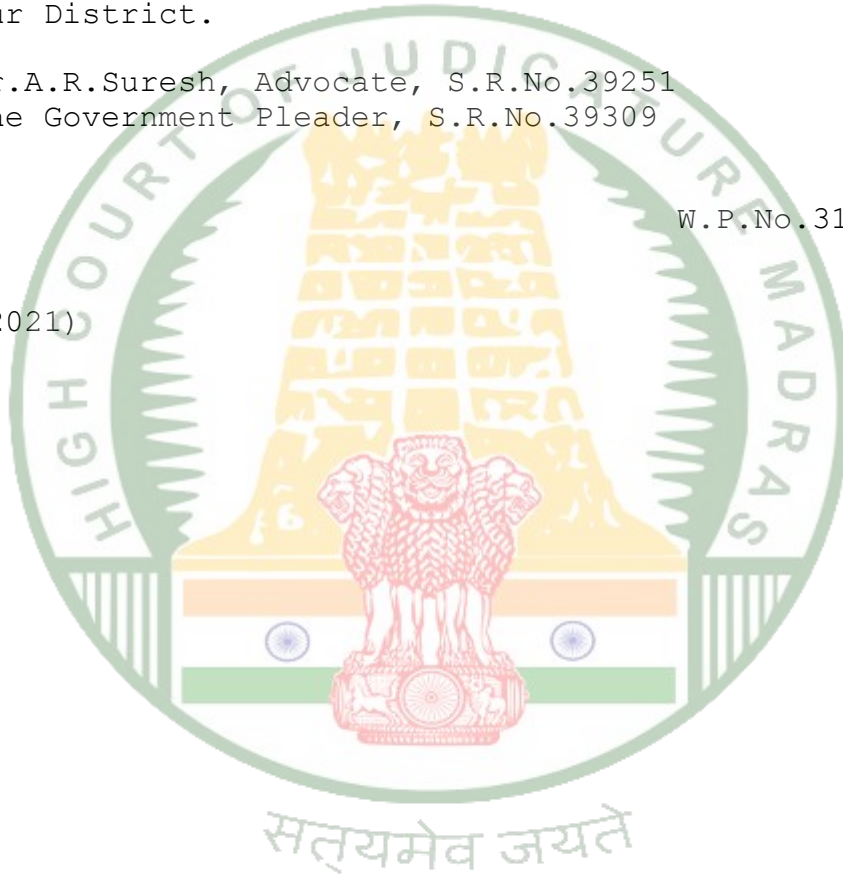
To

1. The District Collector,
Ariyalur District,
Ariyalur.
2. The Revenue Divisional Officer,
Ariyalur Division,
Ariyalur.
3. The Tahsildar,
Ariyalur Taluk,
Ariyalur District.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.39251
+1cc to the Government Pleader, S.R.No.39309

W.P.No.31481 of 2014

MJB(CO)
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