



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P. (MD) No.1524 of 2020

and

W.M.P. (MD) Nos.1227, 1228 & 1230 of 2020

WEB COPY

P.Pandeeswaran

... Petitioner

/vs./

1.The Registrar of Co-operative Society,
NVN Maaligai, EVR Highways,
Kilpauk,
Chennai.

2.The Joint Registrar,
Joint Registrar of Co-operative Society Office,
Madurai Zone.

3.The Deputy Registrar,
Deputy Registrar of Co-operative Society Office,
Usilampatti Region,
Thirumangalam,
Madurai District.

4.The President/Administrator,
MU 8, Usilampatti Taluk Agriculture Producers
Co-operative Marketing Society,
Near PMT College,
Madurai Main Road, Usilampatti,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 04/12/2019 made in Na.Ka.No.1938/2018 Sa Pa (Review Petition No.5/2018 Sa Pa) passed by the second respondent confirming the order passed by the third respondent in his proceedings in Na.Ka.3651/2011 / V Sa, dated 14/09/2012 and quash the same as illegal and consequently direct the respondents to appoint the petitioner as Junior Assistant in the fourth respondent Society.

For Petitioner : Mr.C.Mayilvahana Rajendran

For R1 to R3 : Mr.M.Jeyakumar

Additional Government Pleader

For R4 : Mr.C.Ramar

Additional Government Pleader



ORDER

This Writ Petition is filed to quash the order dated 04.12.2019 passed in Na.Ka.No.1938/2018 Sa Pa (Review Petition No.5/2018 Sa Pa) by the second respondent, confirming the order passed by the third respondent in Na.Ka.3651/2011/V Sa, dated 14.09.2012 and to direct the respondents to appoint the petitioner as Junior Assistant in the fourth respondent Society.

2. Some of the undisputed facts in the present case is that the petitioner's father was appointed as an Office Assistant by the fourth respondent on 01.05.1989 and that he died on 04.05.2001, while he was in service. The services of the employees of the Co-operative Society, who had put in more than 10 years of services, like that of the petitioner's father, similarly placed, were subsequently regularized in their services by taking into account their length of services.

3. The only ground, on which the petitioner's claim seeking for compassionate appointment owing to the death of his father namely, V.Baluchamy, was rejected is that the late V.Baluchamy's services were not regularized and therefore, the petitioner cannot claim for appointment on the ground of compassion.

4. The third respondent herein has passed the present impugned order on 14.09.2012 in the same lines. When the said order came to be challenged by the petitioner before this Court in W.P.(MD) No.6813 of 2013, an order dated 03.01.2018 came to be passed, granting liberty to the petitioner to file a revision before the competent authority, pursuant to which, the petitioner herein had also filed a revision and the impugned order dated 04.12.2019 came to be passed in the said revision by accepting the reasons given by the third respondent that the petitioner's father's services were not regularized during his life time and therefore, the request for compassionate appointment cannot be considered.

5. In identical circumstances, a Division Bench of this Court through its order dated 09.11.2009 in W.A.(MD) No.558 of 2009 had taken into account of the fact that the deceased employees, who had put in considerable length of services, were entitled for regularization and their services had been alive and they can be construed as regularised and consequently, their legal heirs would be entitled for compassionate appointment. The relevant portion of the order reads as follows:

6. As far as the first contention of the learned counsel for the appellant is concerned, it is true that there is no scheme in the appellant society for providing compassionate appointments. Nevertheless, it is an admitted fact that such appointments are being made in deserving cases. Therefore, merely because there is no



scheme available, the request for compassionate appointment cannot be denied. As far as the impugned order in the writ petition rejecting the request for compassionate appointment is concerned, the Society has rejected the request wholly on the ground that the deceased husband of the first respondent was not regularized. In our opinion, having regard to the fact that the deceased employee had put in 15 years of service and in the absence of any scheme stipulating conditions as to consideration of compassionate appointment to the dependants of a regular employee, whether such employee has been made permanent or yet to be made permanent would be highly too technical to reject the application for appointment on compassionate ground. That apart, factually the name of the deceased employee was recommended by the Special Officer of the society in his proceedings dated 29.03.1996 for regularization along with similarly placed persons. However, before such recommendation was given effect to, unfortunately, the employee died on 15.11.1996. From the records it is also seen that within a period of 14 days, ie., on 29.11.1996, the all other persons numbering 14 and whose names were also recommended along with the deceased employee were regularized. The deceased employee could not be regularized as by that time he was not alive. Had been alive, he would have also also been regularized in service. In view of that, the argument of the learned counsel for the appellant that the deceased was not regularized and therefore, the first respondent cannot seek for compassionate appointment cannot be accepted.

6. In view of the categorical pronouncement of the Division Bench of this Court in the aforesaid decision, this Court is also of the view that the action of the respondents in rejecting the petitioner's claim on the ground that the services of the petitioner's father were not regularized, cannot be sustained.

7. It is also not disputed by the respondents that the services of the similarly placed employees, who had rendered services along with the petitioner's father, have now been regularized. This goes without saying that, had the petitioner's father been alive during that relevant point of time when the services of the similarly placed employees were regularized, the services of the petitioner's father also would have been regularized. The unfortunate and untimely death of the petitioner's father during his services, cannot now be cited as a reason that his services were not regularized and therefore, deprived the petitioner to the benefit of on compassionate appointment.



8.It is needless to point out that for the purpose of regularization, the respondents ought to have initiated appropriate steps in favour of the petitioner's father at the relevant point of time when the petitioner's father qualified for regularization and when the respondents had not passed appropriate orders of regularization in time, such an inaction would de-bar them from now citing the non-regularization of the petitioner's father services, as a bar to the petitioner's claim for compassionate appointment.

9.For all the foregoing reasons, I do not find any justification on the part of the respondents 2 and 3 in placing reliance on the reasons for the non regularization cited in the impugned order. Accordingly, the impugned order dated 04.12.2019 passed in Na.Ka.No.1938/2018 Sa Pa (Review Petition No.5/2018 Sa Pa) by the second respondent, confirming the order passed by the third respondent in Na.Ka.3651/2011 / V Sa, dated 14.09.2012 is hereby set aside. Consequently, the matter is remanded back to the second respondent for fresh consideration, in the light of the above observations made in this order. The second respondent is directed to pass fresh orders, atleast within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the second respondent shall not quote the non regularization of the services of the petitioner's father, as a reason for rejection of the petitioner's claim for compassionate appointment.

10.With the above direction, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1.The Registrar of Co-operative Society,
NVN Maaligai, EVR Highways,
Kilpauk,
Chennai.

<https://hcservices.ecourts.gov.in/hcservices/>



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4.The President/Administrator,
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Co-operative Marketing Society,
Near PMT College,
Madurai Main Road, Usilampatti,
Madurai District.

+1 CC to SPL.GP (SR-4778[F] dated 05/02/2020)

+1 CC to MR.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-5085[F] dated
06/02/2020)

W.P. (MD) No.1524 of 2020
04.02.2020

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