



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.1620 of 2014

M.Athithyan

.. Petitioner

Vs.

1.The Director of Town Panchayat,
Kuralagam,
Chennai -108.

2.The Assistant Director,
Town Panchayat,
Sivagangai Division,
Sivagangai District.

3.The Executive Officer,
Manamadurai Selection Grade Town Panchayat,
Manamadurai,
Sivagangai District.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1st respondent in his proceedings in Na.Ka.No.14067/2012/A3, dated 10.01.2013 and quash the same and direct the respondents to appoint the petitioner on compassionate ground and confer all the consequential benefits.

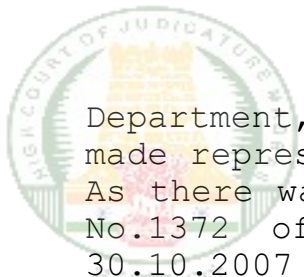
For petitioner : Mr.V.Panner Selvam

For respondents : Mr.S.Dhayalan,
Government Advocate

ORDER

This writ petition has been filed by the petitioner challenging the impugned order rejecting the case of the petitioner for compassionate appointment on the ground that the service of the petitioner's father has not been regularised.

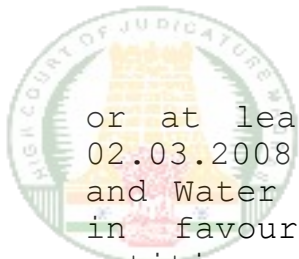
2. The learned counsel for the petitioner submitted that the petitioner's father by name K.Mayilvahanan was appointed as Toll Collector through Employment Exchange on 16.12.1991, along with six other persons, in the 3rd respondent Panchayat on daily wage basis. Based on G.O.Ms.No.125, Municipal Administration and Water Supply



Department, dated 27.05.1999, the petitioner's father and six others made representation to the respondents to regularise their services. As there was no response to the same, five persons filed W.P.(MD).No.1372 of 2007 and the same was disposed by this Court on 30.10.2007 with a direction to consider and pass orders within a stipulated time. Based on that order, the respondents brought the petitioners therein on regular time scale of pay by an order dated 30.11.2007. As the respondents omitted to consider the case of the petitioner and another person by name S.Pandi, who are similarly placed along with the petitioners in W.P.(MD).No.1372 of 2007, they subsequently constrained to approach this Court in W.P.(MD).No.3570 of 2008. This Court, by order dated 17.04.2008, disposed of the Writ Petition with a direction to the first respondent herein to consider the representation of the petitioner's father dated 02.03.2008 and pass orders within a period of six weeks. The father of the petitioner and the said S.Pandi have sent a representation to the respondents along with a copy of the order of this Court dated 17.04.2008 for earliest consideration.

3. The learned counsel for the petitioner would further submit that while so, the father of the petitioner died on 08.05.2008. On 03.06.2008, the first respondent has sent a communication to S.Pandi stating that in order to regularise the services of persons, who were completed 10 years of service as on 01.01.2006, proposals were forwarded to the Government and that the name of the father of the petitioner as well as S.Pandi are also available in that proposals. Subsequently, the 3rd respondent has passed an order dated 11.12.2009, regularising the service of S.Pandi, referring the G.O. as well as the proceeding of the first respondent. In the meantime, on 25.08.2008 the petitioner has sent a representation to the respondents requesting to appoint him in compassionate ground and as there was no response to the same, the petitioner has sent several reminders, lastly on 02.08.2011. As there was no response from the respondents even after reminders, the petitioner has filed W.P.(MD).No.4828 of 2012 before this Court. This Court, by order dated 26.07.2012, directed the respondents herein to consider the representation of the petitioner dated 25.08.2008 and reminders and to decide whether the petitioner is eligible for appointment on compassionate ground or not within a period of four months. By impugned order dated 10.01.2013, the first respondent rejected the case of the petitioner holding that there is no provision/scheme in the Government Orders to provide compassionate appointment for legal heirs of daily wage employees. Challenging the said order, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner further submitted that the petitioner's father worked for more than 16 years in the 3rd respondent Panchayat. If the respondents considered the case of the father of the petitioner in the light of the order of this Court dated 30.10.2007 for similarly placed persons

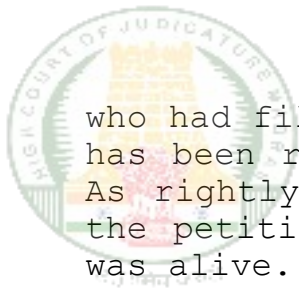


or at least the representation of the petitioner's father dated 02.03.2008 in the light of G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999 and the order passed in favour of similarly placed persons, the service of the petitioner's father could have been regularised even before his death. Due to the delay on the part of respondents, now the petitioner has been suffering and the respondents cannot reject the claim of the petitioner. Thus, he prayed to allow this writ petition.

5. The learned Government Advocate appearing for the respondents submitted that the petitioner's father name was not included in the list for regularization of service at any point of time. As per G.O.Ms.No.560, Labour and Employment Department, dated 12.03.2007 and G.O.Ms.42 of Labour and Employment Department, dated 12.10.2010, compassionate appointment cannot be given to the legal heirs of the persons who died before the regularisation of their service. The petitioner cannot claim the appointment on compassionate ground as a matter of right. Considering the same, the first respondent has rejected the claim of the petitioner by the impugned order and the same need not be interfered with. Thus, he prayed to dismiss this writ petition.

6. Heard the learned counsel for both sides and perused the records carefully.

7. Admittedly, it is not in dispute that the father of the petitioner had served more than 16 years in the 3rd respondent Panchayat on daily wage basis. It is also not in dispute that the service of the some of the persons, those who have been appointed along with the father of the petitioner, have been regularised even before the death of the petitioner's father, based on the order of this Court. While considering the case of the similarly placed persons as per the order of this Court dated 30.10.2007, the respondents, being a model employer, could have been considered the case of the father of the petitioner and S.Pandi also, but they have failed to do so. At-least, if the respondents considered the case of the petitioner's father, immediately after receipt of his representation dated 02.03.2008 in the light of the order passed in G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.05.1999 and similarly placed persons, the service of the father of the petitioner could have been regularised before his death, but the respondents have failed to do so. The inaction on the part of the respondents constrained the petitioner's father to approach this Court and to get a direction for consideration of his case. The first respondent also in his proceedings in Na.Ka.No.8356/2008/A3, dated 03.06.2008, has stated that the proposals for regularisation of service of the father of the petitioner and S.Pandi along with similarly placed persons have been forwarded to the Government. But, unfortunately, having served about 16 years, the father of the petitioner died on 08.05.2008 <https://hccservicescourtsgetit/hccservices/> the order of regularisation. The service of S.Pandi,



who had filed writ petition along with the father of the petitioner, has been regularised in a regular time scale of pay on 11.12.2009. As rightly stated by the petitioner, the service of the father of the petitioner also would be regularised along with S.Pandi, if he was alive.

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8. Having issued the G.Os. for regularisation of service and having considered the case of similarly placed persons, the respondents, being a model employer, ought to have been considered the case of the similarly placed persons, who have not approached the Court with fond hope on their employer, then and there, without any discrimination or without awaiting an order from the Court. Due to the failure of the respondents in considering the case of the petitioner along with similarly placed persons, in this case, the father of the petitioner was forced to approach this Court and to wait for the action of the respondents. The inaction of the respondents writ large in this matter and the same made the petitioner to suffer and knock the door of this Court.

9. When an employer filed an appeal questioning order of a learned Single Judge granting the similar relief, a Division Bench of this Court in the decision of the **Special Officer, Melur Co-operative Marketing Society Limited, Melur Vs. S.Jothilakshmi and others, in W.A. (MD).No.558 of 2009, dated 09.11.2009**, has dismissed the appeal. The relevant portion is extracted hereunder:

"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 regularised. 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 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 regularisation 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 employees were regularised. The deceased employee could not be regularised as by that time he was not alive. Had he been alive, he would have also been regularised in service. In view of that, the argument of the learned counsel for the appellant that the deceased was not regularised and therefore, the first respondent cannot seek for compassionate appointment cannot be accepted.

7.As far as the further contention is concerned, it is not as if that the said first respondent should be accommodated in the same post, where the deceased employee was employed. Appointment on compassionate ground cannot be claimed as a matter of right, but it is an exception to the general rule of appointment. Nevertheless, when the provision for such appointment is extended to the dependants of other employee, the right of the first respondent to make an application for consideration has to be accepted. In that event, such application should be considered with reference to the availability of post to which the applicant is otherwise eligible. The only reason for rejecting the appointment is that the deceased was not a regular employee. Inasmuch as we have rejected the said contention, the first respondent is entitled to the appointment as directed by the learned Single Judge, of-course, to a suitable post which is available in the society."

10. In the case of the **Secretary to Government Vs. M.Karuppan, in W.A.No.1062 of 2017, dated 15.09.2017**, a Division Bench of this Court has held in paragraph Nos.8 and 9 as follows:

"8. Though, it is the contention of the learned Special Government Pleader appearing for the appellants that when the writ petitioner's father was not a permanent member of the Government service as his sad demise took place on 07.05.2003, cannot confer any benefit to the petitioner for compassionate appointment, for the simple reason that on 07.05.2003, the services of his father was not regularised, in an identical situation in G.Ashokan vs. the District Collector, Tiruvannamalai District, Tiruvannamalai and another in W.P.No.413/2013, dated 22.04.2014, a Division Bench of this Court has set aside the dismissal



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order of the Single Judge by citing that existence of the particular post from 08.10.1986 for about 25 years is proved by the conduct of the respondents allowing the petitioner therein to continue in service. The Division Bench of this Court has also cited a decision of the Hon'ble Apex Court in State of Jharkhand v. Jitendra Kumar Srivastava reported in AIR 2013 SC 3383 in which it has been held that it is the settled proposition of law that right to get actual salary/leave salary and retirement benefits are right to property as per Article 300 A of the Constitution of India. Such benefits cannot be deprived to person or legal heirs, who are eligible to receive the same. In the instant case also, the appellants have held that there is no such regularisation as on the date of the death of the father of the writ petitioner. But, according to the 1st respondent herein / writ petitioner, a Government Order in G.O.Ms.No.57, dated 20.06.2013, has been issued for regularising the services of those who were absorbed in the Rural Development and Panchayat Raj Department and in that process, several other persons have been absorbed. The petitioner's father is also identically placed like those candidates who were absorbed vide G.O.Ms.No.57, dated 20.06.2013. Further, the petitioner's father was originally appointed as Masalchi on 08.10.1971 and subsequently, he was promoted to the post of Office Assistant vide proceedings dated 26.02.1977 and by proceedings dated 22.04.2003, the petitioner's father was also absorbed in the vacant post of Office Assistant in the District Development Agency, Dharmapuri. The petitioner's father has worked in that capacity for a long time and thereafter, on account of closure of the District Rural Development Agency, he was absorbed as a Government Employee and before regularising his services, he died.

9. Therefore, taking analogy of the decision of the Apex Court in the State of Jharkhand v. Jitendra Kumar Srivastava reported in AIR 2013 SC 3383, we are of the view that when the single Judge has not committed error in directing the Government Department to extend the benefit of compassionate appointment to the petitioner, it is for the appellant Government to consider the case of the first respondent and appoint him on compassionate ground within a period of three months from the date of receipt of a copy of this order."



11. The dictum laid down in the above cases is squarely applicable to this case. Following the above decisions and considering the peculiar facts and circumstances of this case and also considering the fact that only on the failure of the respondents to consider the case of the petitioner along with similarly placed persons and to act quickly, the service of the father of the petitioner could not be regularised and now almost 12 years have elapsed from the date of application of the petitioner for compassionate appointment, this Court is inclined to set aside the impugned order and to direct the respondents to appoint the petitioner on compassionate ground.

12. In view of the above, the impugned order is set aside and the first respondent is directed to extend the benefit of compassionate appointment to the petitioner and appoint him on compassionate ground in a suitable post within a period of twelve weeks from date of receipt of a copy of this order.

13. This Writ Petition stands disposed of accordingly.
No costs.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Director of Town Panchayat,
Kuralagam,
Chennai -108.

2.The Assistant Director,
Town Panchayat,
Sivagangai Division,
Sivagangai District.

3.The Executive Officer,
Manamadurai Selection Grade Town Panchayat,
Manamadurai,
Sivagangai District.

+1CC TO MR.V.PANNEERSELVAM,ADVOCATE, SR NO.848

+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, SR NO.968

W.P(MD)No.1620 of 2014

08.01.2020

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