**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on	28.02.2020
Pronounced on	29.06.2020

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CORAM:**THE HONOURABLE MR. JUSTICE M.S.RAMESH****W.P. (MD) No.10405 of 2016****and****W.M.P.Nos.8119 & 8120 of 2016**

K.Perumal

...Petitioner

Vs.

1.The Director,

O/o. The Director,

Department of Public Health and Preventive Medicine,

DMS Campus,

Thenampet,

Chennai.

2.The Deputy Director of Health Service,

O/o. The Deputy Director of Health Services,

Theni District,

Theni.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.81207/P.THO.4/2014/IRU3 dated 26.03.2016 on the file of the first respondent and its consequential order in.Na.Ka.No.1687/A1/2006 dated 28.04.2016 on the file of second respondent and to quash the same as illegal and consequential direct the second respondent to appoint the petitioner for the post of Junior Assistant or any other post on compassionate ground within the time stipulated by this Court.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mr.R.Sethuraman SGP

O R D E R

The petitioner herein is the son of the Government Servant Late Kalimuthu, born through the second wife of the employee namely, Mayilu. It is stated that the first wife of the petitioner's father did not bear any child and therefore, he had married for the second time. The petitioner's father died in harness, on 05.08.2003. The petitioner's claim for compassionate appointment made on 23.01.2006 came to be rejected through the impugned order dated 28.04.2016, after a period of three months on the ground that the son of the



second wife is not entitled to seek compassionate appointment. The rejection order is put under challenge in the present Writ Petition.

2. Heard Mr.T.Lajapathi Roy, learned counsel for the petitioner and Mr.R.Sethuraman, learned Special Government Pleader appearing on behalf of the respondents.

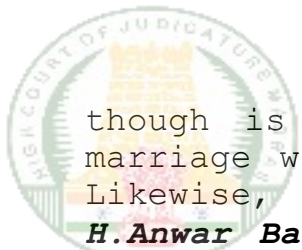
3. The learned counsel for the petitioner would submit that at the time of the death of the petitioner's father, the family was in financial constraint and indigent condition and the status of the petitioner as a son of the second wife of his father, cannot be a disqualification for consideration for compassionate appointment.

4. The learned Special Government Pleader, by relying upon the counter affidavit would submit that as per the Government Order in G.O.Ms.No.34, Labour and Employment (Q1) Department, dated 16.04.2002, the children born out of void marriages would be entitled for family pension, death cum retirement gratuity and not for compassionate appointment. Hence, there is no infirmity in the impugned order passed by the respondents.

5. The only ground on which the impugned rejection order came to be passed is by placing reliance on the letter (G.O.Ms.No.34, Labour and Employment (Q1) Department, dated 16.04.2002). Though the counter affidavit refers to this letter dated 16.04.2002 as a Government Order, effectively, it is only a clarification letter to the various Government Orders referred therein with regard to the interpretation with regard to the term "Children". As per the clarification, the Secretary to the Government, Labour and Employment (Q1) Department as stated that the children born out of void marriages would be entitled for monetary benefit of the deceased employee and not for compassionate appointment, since such compassionate appointment cannot be equated to the status of property of the deceased and that the word "Son or Unmarried daughters" used in the scheme for compassionate appointment, has to be construed to only mean the son or daughter born through a valid wedlock. It is in view of this clarification, the impugned rejection order came to be passed, stating that the petitioner being the son of the second wife will not fall in the purview of the word "Son or Unmarried daughters" for the purpose of appointment on compassionate grounds. The reasoning in the impugned order is *per-se* illegal in view of the various decisions of the Hon'ble Supreme Court as well as this Court.

6. In **Chand Patel V. Bismillah Begum and another reported in 2008 (2) CTC 308 SC**, it has been held that the second marriage

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



though is said to be irregular, the children born out of such marriage will be entitled to claim the benefits of their parents. Likewise, a Hon'ble Division Bench of this Court in the case of **H.Anwar Basha v. Registrar General, Madras High Court and another** reported in **2008 (5) MLJ 795**, had dealt with the issue as to whether the illegitimate children would be entitled for compassionate appointment and ultimately, held that such children, who are claimed to be illegitimate, will be entitled to seek for compassionate appointment. In support of such a conclusion, the Hon'ble Division had placed reliance on the decision of *Chand Patel's case (supra)* as well as **Haryana State Electricity Board V. Naresh Tanwar and another** reported in **1996 (8) SCC 23**. The relevant portion of the order reads as follows:

"30. The object of the compassionate appointment to a son or daughter or near relative, who would take care of the family of the Government Servant, who dies in harness, leaving his family in indigent circumstances is to mitigate the sufferings of the bereaved family. In this connection, it has to be noted whether the person appointed on compassionate grounds is continuing to support his family or not. As seen from Exs.P-18 and P-19, the delinquent was shown as one of the family members of Shaik Hyder. If that is taken into account, the delinquent would definitely come under the dependants. Therefore, the object under which the compassionate appointment has been provided to the bereaved family of Shaik Hyder has been rightly met. As such, the legitimacy or illegitimacy cannot be a stumbling block for the petitioner to get employment. Hence, the impugned order, in our considered view, suffers from illegality and perversity and the same is liable to be set aside."

7. Following the decision of the Hon'ble Division Bench in *H.Anwar Basha's case (supra)*, this Court, in a Writ Petition in W.P.No.33464 of 2009 dated 23.09.2009 in the case of **E.Baikaraj V. DGP and two others** held that the children born through illegitimate marriages would be entitled for compassionate appointment. Thus, the term "Son or Unmarried daughters" referred to in the various Government Orders facilitating appointment on compassionate ground would include illegitimate children also, apart from their entitlement for monetary benefits arising out of the death of a Government employee. The clarification of the Secretary to the Government, Labour and Employment (Q1) Department, dated 16.04.2002 is clearly opposed to this proposition and the first respondent herein is not justified in placing reliance on such a clarification while passing the impugned order. Furthermore, the interpretation of



the term "Son or Unmarried daughters" being contrary to the aforementioned judicial pronouncements, cannot give a contrary view to exclude children born out of illegitimacy. While that being so, the impugned order cannot be sustained and thereby, the petitioner would be entitled for compassionate appointment.

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8. In the light of the above observations and findings, the impugned orders passed by the respondents 1 & 2 dated 26.03.2016 & 28.04.2016 are set aside. Consequently, there shall be a direction to the concerned respondent to issue an appointment order to the petitioner herein, on compassionate grounds, to such post that may be proportionate to the petitioner's qualification. The concerned respondent shall ensure that the appointment order is issued at least within a period of eight weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

DP

To

1.The Director,
Department of Public Health and Preventive Medicine,
DMS Campus,
Thenampet,
Chennai.

2.The Deputy Director of Health Service,
Theni District,
Theni.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-9578[F] dated 02/03/2020)

**Pre-Delivery order in
W.P. (MD) No.10405 of 2016**

**and
W.M.P.Nos.8119 & 8120 of 2016
29.06.2020**

AP (27.07.2020) 4P-4C