

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

Reserved on	28.02.2020
Pronounced on	29.06.2020

WEB COPY

CORAM:**THE HONOURABLE MR. JUSTICE M.S.RAMESH****W.P. (MD) No.135 of 2016**

Muthuvijayan

...Petitioner

Vs.

1.The District Collector,
Virudhunagar District.2.The Revenue Divisional Officer,
Aruppukottai, Virudhunagar District.3.The Thasildar,
Kariyapatti Taluk, Virudhunagar District.4.The Thasildar,
Aruppukottai Taluk,
Virudhunagar District.

...Respondents

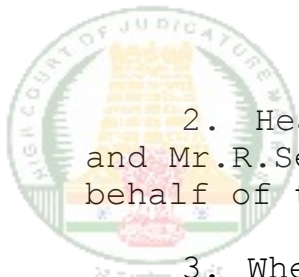
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent's proceedings in ந.க.அ.6/34777/2009 dated 28.03.2015 and to quash the same as illegal and consequently direct the respondents to provide compassionate appointment to the petitioner on the basis of his educational qualification within a time stipulated by this Court.

For Petitioner : Mr.A.K.Manickam

For Respondents : Mr.R.Sethuraman, SGP

O R D E R

While the petitioner's father, Late Sivalingam was serving as a Village Administrative Officer under the respondents herein, he died in harness, on 11.11.1998, leaving behind the petitioner herein and four others as his legal heirs. The petitioner's request for compassionate appointment has been rejected through the impugned order dated 28.03.2015 on the grounds that the petitioner's brother and sister-in-law are earning members and that the earlier claim made by the petitioner's sister was already rejected. The order of rejection is put under challenge in the present Writ Petition.

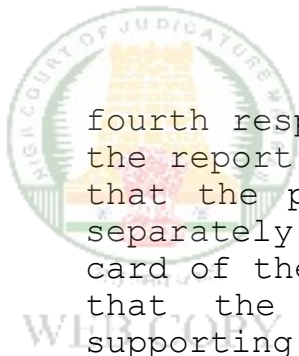


2. Heard Mr.A.K.Manickam, learned counsel for the petitioner and Mr.R.Sethuraman, learned Special Government Pleader appearing on behalf of the respondents.

3. When the petitioner's father had expired on 11.11.1998, the petitioner's sister Nagamani made an application seeking compassionate appointment, which came to be rejected on 14.10.2008, stating that her family was not in distressed circumstances. The petitioner, however, claims to be ignorant of the rejection. On the belief that his sister's claim was pending and since she had got married during such pendency and had also given up her claim for compassionate appointment, the petitioner made an application seeking for compassionate appointment on 02.06.2014. Since his application was not acted upon, he had filed a Writ Petition in W.P. (MD)No.12862 of 2014, in which he had stated that his sister had got married and though her application was recommended, she had not preferred to make the claim and therefore, he had made an application on 02.06.2014, seeking compassionate appointment for himself. This Court, by an order dated 13.08.2014 directed the respondents to consider the representation in the light of the earlier application submitted by his sister. Pursuant to the order of this Court, the fourth respondent herein had conducted an enquiry, in which he had stated that the family of the petitioner is in distressed condition and the petitioner was not financially supported by his brother.

4. The first respondent herein had however chosen to reject the petitioner's claim without considering the report of the fourth respondent herein. While giving the reasons for rejection, the first respondent herein had stated that the petitioner's brother Naganathan was employed as a Doctor and earning Rs.45,000/- per month . It was also stated that Naganathan's wife Mrs.Arthi was earning Rs.38,000/- per month. Apart from these two reasons, the first respondent herein had placed reliance on the guidelines issued by the Principal Secretary cum Commissioner of Revenue dated 21.07.2011 and stated that when the claim of one of the legal heir was already been rejected, the second claim by the petitioner, cannot be maintainable.

5. Perusal of the reasonings in the impugned order reveals the non application of mind on the part of the first respondent. When reliance has been placed on the report of the fourth respondent, which specifically states the petitioner's family is in distressed condition and not supported by the petitioner's brother, the first respondent had come to the conclusion that the petitioner's family was not in distressed situation, on the ground that the petitioner's brother and sister-in-law were having sufficient income, there is absolutely no material, apart from the report of the fourth respondent herein dated 27.01.2015, for coming into such conclusion. The impugned order does not refer to any material or other independent enquiry, but as simply relied upon the report of the



fourth respondent for arriving at the aforesaid conclusion. Whereas the report of the fourth respondent dated 27.01.2015, clearly states that the petitioner's brother Naganathan and his wife were living separately and that his brother's name was removed from the ration card of the petitioner. The fourth respondent's report also reveals that the petitioner's brother Naganathan was not financially supporting the petitioner, who was living only with his mother. Above all, the fourth respondent had clearly stated in his report that the petitioner was living in a financial constrained condition.

6. When all these findings of the fourth respondent, which is based on enquiry, reveals otherwise, I am unable to comprehend as to how the first respondent came to a contrary conclusion without conducting an enquiry by himself or placing reliance on any other material to support his claim that petitioner had financial support from his brother and that the petitioner's family was financially sound. In the absence of such evidences, the findings itself is deemed to be one of non application of mind and therefore, the basis on which the conclusion arrived, requires to be disregarded.

7. The other reason assigned by the first respondent in the impugned order is that the petitioner's sister had earlier made an application which was rejected and therefore, the petitioner is debarred from making another claim for compassionate appointment. This reasoning is also not sustainable. When the petitioner had already filed a Writ Petition in W.P.(MD)No.12862 of 2014 that he had stated that his sister Nagamani's earlier application for compassionate appointment is still pending and since she was married, he had made an application in continuation of his sister's earlier application seeking for appointment for himself. During adjudication, the respondents herein were also represented by their own counsel. No objections were put-forth by the respondents in the earlier Writ Petition stating that the petitioner's sister's application was already rejected on 14.10.2008. It is in this background that this Court, by its order dated 13.08.2014 passed in the aforesaid Writ Petition, directed the respondents to consider the petitioner's application dated 02.06.2014 seeking compassionate appointment, in the light of the earlier application submitted by his sister. If at all, the respondents were of the view that the petitioner's sister's application was already rejected on 14.10.2008, the option would have been available to them is to seek for a review of the order dated 13.08.2014 in W.P.(MD) No.12862 of 2014 or to challenge the order passed in the Writ Petition. Instead of adhering to these alternate methods, the first respondent herein is not now justified in referring to the rejection of the petitioner's sister's application. Even otherwise, the petitioner disputes the rejection of his sister's application and the respondents have also failed to prove beyond reasonable doubt that the rejection order of the petitioner's sister was duly served, which raises a suspicion. As such, this reasoning in the impugned order cannot be sustained.



8. The petitioner's father died on 11.11.1998 when the petitioner was 12 years old. His request for compassionate appointment as a legal heir of the deceased employee has been pending for a very long time. It would be pertinent to point out that in all cases where claim is made for compassionate appointment, the concerned authorities are required to act efficaciously and speedily, since the very purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread-earner in the family and that there should not be any delay in such appointments. This proposition was held by the Hon'ble Apex Court in the case of **Sushma Gosain vs. Union of India** reported in **1989 (4) SCC 468** had held as follows:

'It must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.'

9. The same ratio was reiterated by the Hon'ble Apex Court in the case of **Canara Bank vs. M.Mahesh Kumar** reported in **2015 (7) SCC 412**.

10. In the light of the above discussions, I am of the affirmed view that the petitioner should be extended the benefit of appointment on compassionate ground, by directing the respondents to do so in view of the unsustainable findings in the impugned order.

11. Accordingly, the impugned order passed by the first respondent dated 28.03.2015 is 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 atleast within a period of eight weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (Crl.Side)

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/ /2020

Sub Assistant Registrar(CS)



To

- 1.The District Collector,
Virudhunagar District.
- 2.The Revenue Divisional Officer,
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- 4.The Thasildar,
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order in
W.P. (MD) No.135 of 2016
29.06.2020

DP
SDS (17.07.2020) 5P-5C