

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	26.02.2020
Pronounced on	28.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.1279 of 2017andW.M.P (MD) No.1066 of 2017

K.Ganapathy

...Petitioner

Vs.

1.The Principal Secretary cum
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai.

2.The District Collector,
Sivagangai District,
Sivangai.

3.The Revenue Divisional Officer,
Devakottai, Sivangai District.

4.The Tahsildar,
Devakottai, Sivagangai 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 relating to the order passed by the first respondent in Na.Ka.No.A.Ku4/18847/2014 dated 17.07.2015 and to quash the same and consequently direct the respondents to appoint the petitioner in any post which is suitable for him on compassionate ground.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.V.Anand, G.A.

O R D E R

The petitioner, who is the son of one Karuppiyah had sought for compassionate appointment on account of the death of his father, who was employed as 'Village Karnam' in the respondent Department. His request came to be rejected through the impugned order dated 17.07.2015 stating that the petitioner's father had died, after



the post of Village Karnam was abolished and since he was not in service at the time of his death, his request cannot be considered. The said impugned order is put under challenge in the present Writ Petition.

2. Heard Mr.T.Pon Ramkumar, learned counsel for the petitioner and Mr.V.Anand, learned Government Advocate appearing on behalf of the respondents.

3. The brief facts of the case is that petitioner's father K.Karupppiah served as a Village Munsif in Eluvankottai Village, Devakottai Taluk, Ramanathapuram District from the year 1967 onwards. The post of Village Munsif was abolished by an Ordinance dated 14.11.1980 and accordingly, the petitioner's father's services was ousted. Subsequently, the Ordinance came to be challenged by the aggrieved Village Munsifs and ultimately, the Hon'ble Supreme Court in a decision reported in **AIR 1982 SC 1107 [K.Rajendran and others V. State of Tamil Nadu and others]** held that the ousted Village Munsifs, who possessed the required qualification can be absorbed as Village Administrative Officers.

4. On 27.04.1994, the petitioner's father died and his widow claims to have made an application to the second respondent on 23.07.1985 seeking compassionate appointment. The petitioner herein had also given representations on various dates, the last being on 28.03.2012. In this background, the request for compassionate appointment came to be rejected through the impugned order dated 17.07.2015, on the ground that the petitioner's father was not in service as a Village Munsif at the time of his death and also since the post of Village Munsif was already abolished by then.

5. The reasoning of the respondents in the impugned order cannot be sustained. After the post of Village Munsif was abolished, the Hon'ble Supreme Court in *K.Rajendran's case (supra)* had directed the State Government to re-employ the persons, who were holding the post of part time Village Munsifs to the post of Village Administrative Officers, subject to possessing the required qualifications. The relevant portion of the observations is as follows:

"(i) The State Government will give effect to the memorandum filed on his Behalf which is incorporated in this judgment in the case of those who possess the minimum general qualifications prescribed under the Act and the Rules made thereunder and who were holding the posts of part-time village officers immediately before the Act came into force. The State Government shall re-



employ all such persons who have not crossed the age of superannuation and who are selected as per the memorandum in the new cadre within four months from today. Until they are so selected, they will not be paid any remuneration. Even if they are re-employed, the amount paid to them pursuant to the interim orders will not be recovered from them."

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The Government had thereafter passed an order in G.O.Ms.No.391, Revenue Department, dated 19.07.1999, to absorb all Village Munsifs as Village Administrative Officers, irrespective of the fact as to whether they were parties to the proceedings before the Hon'ble Supreme Court or not. As such, if the petitioner's father had been alive when the aforesaid decision was pronounced, he would have been entitled to be absorbed as a Village Administrative Officer, since he possessed the required minimum general qualification.

6. The only reason cited by the respondent in the impugned order is that the petitioner's request for compassionate appointment cannot be considered, since his father was not in service at the relevant period. The position is akin to situations where an employee, dies prior to regularization of his services and who was rightfully entitled to be regularized in service, at the time of his death. In such situations, a Hon'ble Division Bench of this Court, in the case of The Special Officer, Melur Marketing Co-operative Marketing Society Limited, Melur, Madurai District Vs. S.Jothilakshmi and others (W.A.No.558 of 2009) dated 09.11.2009, had held that when the deceased employee was entitled to be regularized at the time of his death, his legal heirs will be entitled to seek 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

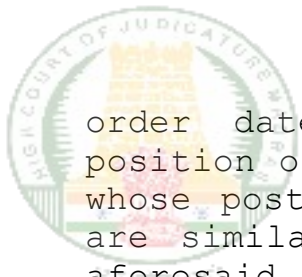


regular employee, whether such employee has been made permanent or yet to be made permanent would be highly too technical to reject the application for appointment on compassionate ground. That apart, factually the name of the deceased employee was recommended by the Special Officer of the Society in 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, i.e., 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 he been alive, he would have 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.

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."

7. A similar view has also been taken in a Writ Petition filed in W.P.No.8393 of 2017 dated 05.06.2017 in the case of **M.Kuruppan V.The Secretary to Government, Rural Development and Panchayat Raj Department, Chennai and others**. The appeal filed against the

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order dated 15.09.2017 passed in W.A.No.1062 of 2017. The position of a non regularized employee and the petitioner's father whose post was abolished when he was a temporary Village Munsif are similar in nature. The basis on which this Court, in the aforesaid decisions, came to the conclusion that the benefit of compassionate appointment can be extended to a legal heir of the deceased non regularized employee is that the employee would have been eligible for regularization, if he had been alive. In the present case also, if the petitioner's father had been alive when similarly placed Village Munsifs were absorbed as permanent Village Administrative Officers, he would have had the benefit of being absorbed as a Village Administrative Officer and his legal heirs would also be entitled to claim compassionate appointment on his death. In consequence of this finding, the reasoning adduced by the respondent in the impugned order cannot be sustained. Accordingly, the petitioner, who is the legal heir of the deceased employee, would be entitled to seek appointment on compassionate grounds.

8. In the light of the above observations and findings, the impugned order dated 17.07.2015 is set aside. Consequently, there shall be a direction to the respondents 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 four weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

DP

To

1.The Principal Secretary cum
Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai.

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



2.The District Collector,
Sivagangai District,
Sivangai.

3.The Revenue Divisional Officer,
Devakottai, Sivangai District.

4.The Tahsildar,
Devakottai, Sivagangai District.

+1 CC to M/s.T.PON RAMKUMAR, Advocate(SR-9426[F] dated 02/03/2020)

+1 CC to M/s.SPL GP (SR-9520[F] dated 02/03/2020)

Pre-Delivery Order made in
W.P. (MD) No.1279 of 2017
and
W.M.P (MD) No.1066 of 2017

28.02.2020

SPU(14.07.2020) 6P 7C