



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2021

DELIVERED ON : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NO.6859 OF 2013

AND

MP.NO.1 OF 2013

A.Sreedhar

...Petitioner

..vs..

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Department of Rural Development &
Panchayat Raj,
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
Rural Development Panchayat Raj,
Panagal Building, 4th Floor,
Saidapet, Chennai - 600 015.
3. The District Collector,
Coimbatore District
Coimbatore.
4. The Commissioner,
Panchayat Union,
Pollachi North,
Coimbatore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the Third Respondent in his Mu.Mu.975/2012/K4 dated 26.03.2012 and the consequential order passed by the Fourth Respondent in his Na.Ka.No.1212/12/E-1 dated 19.07.2012 and quash the same and to direct the respondents to issue suitable posting order to the Petitioner on compassionate ground.



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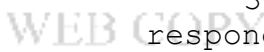
For Petitioner : M/s A.S.Mujibur Rahman
For R1 to R3 : Mr.J.Ramesh, AGP
For R4 : Mrs.M.E.Rani Selvan

ORDER

The case projected in this writ petition is as follows:

The petitioner's mother by name, B.Valarmathi was appointed as Makkal Nala Paniyalar by the proceedings of the third respondent dated 18.07.1990. Subsequently, based on G.O.Ms.No.179 Rural Development and Panchayat Raj (E5) Department dated 27.11.2008, she was appointed as Night Watchman with effect from 18.02.2010. Pursuant to the same, she was relieved from the third respondent on 24.02.2010 and she joined as Night Watchman under the fourth respondent. While she was working as such, she died on 29.05.2010. Seeking compassionate appointment to the petitioner, his father submitted a representation on 23.09.2011 to the third respondent, which was rejected by order dated 26.03.2012 stating that his mother had completed only three months service as Night Watchman and therefore, the request for compassionate ground appointment was not feasible as per the existing rule. Feeling aggrieved, the petitioner's father made another representation dated 11.07.2012 to the fourth respondent. However, the said representation was not considered and was rejected by memo dated 19.07.2012, on the ground that the services of the petitioner's mother were not regularised and hence, the compassionate ground appointment cannot be granted. Questioning these two orders dated 26.03.2012 and 19.07.2012 passed by the respective respondents 3 and 4, the petitioner has come up with this writ petition. A consequential direction has also been sought to the respondents to issue suitable posting order to the petitioner on compassionate ground.

2.The learned counsel for the petitioner submitted that the mother of the petitioner joined as Makkal Nala Paniyalar on 18.07.1990 and was working as such continuously; and thereafter, she was promoted as Night Watchman with effect from 24.02.2010, pursuant to G.O.Ms.No.179 dated 27.11.2008, after regularising her service and preparing the seniority list by the first respondent; and hence, the rejection of the request seeking compassionate appointment to the petitioner stating that her mother had completed only three months and her services were not regularized, is arbitrary, illegal and contrary to law. The learned counsel further submitted that the mother of the petitioner is the only breadwinner of her family and after her demise, the petitioner's family has been facing severe financial crisis and hence, the petitioner may be considered for

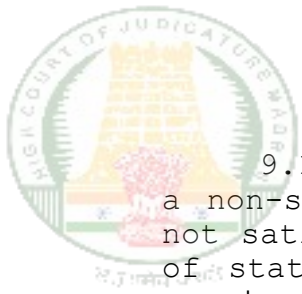


3. Per contra, the learned counsel appearing for the respondents submitted that considering the prevailing rules and the Government Orders, the respondents 3 and 4 have rightly rejected the representations seeking compassionate appointment to the petitioner and hence, no interference is required by this Court.

5.The challenge made in this writ petition is to the orders dated 26.03.2012 and 19.07.2012 passed by the respective third and fourth respondents, thereby rejecting the claim of the petitioner's father seeking compassionate ground appointment to the petitioner, on the death of her mother B.Valarmathi.

7. According to the petitioner, after regularisation of service, her mother was given appointment as Night watchman in the permanent vacancy and hence, he is entitled for compassionate ground appointment, whereas the respondents stated that the service of the petitioner's mother was not regularized and she had completed as Night Watchman only for three months from the date of her death and hence, no appointment was provided to the petitioner on compassionate ground.

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



9. It is a settled legal position that when an appointee in a non-sanctioned post worked for so many years, appointee does not satisfy the test of permanent appointment; and the elevation of status of an appointee from adhoc, temporary to permanent, requires application of a rule/regulation which has sanction by law [Refer: State of M.P. v Dharamvir, (1998) 6 SCC 165]. It is also a settled legal position that an adhoc employee cannot be regularised even if any selection is made following the rules for such appointment [Refer: Dr.Chanchal Goyal v State of Rajasthan, (2003) 3 SCC 485].

10. Further, as per G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020, which supersedes all the earlier Government Orders issued from the year 1972, the legal heirs of the person, whose services are not regularized, are not eligible for consideration under compassionate ground appointment.

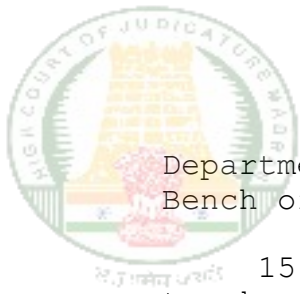
11. Applying the legal position coupled with the latest Government Order as stated above, this Court is of the opinion that the petitioner is not entitled for appointment on compassionate grounds and therefore, the orders impugned herein are perfectly right and the same warrant no interference.

12. At this juncture, it is to be pointed out that the whole object of granting compassionate appointment is to enable the family of the deceased Government servant to tide over the sudden crisis. However, it cannot be claimed as a matter of right and it is traceable only to the service rule permitting such appointment on compassionate basis or a scheme framed for this purpose. In Chief Commissioner, Central Excise and Customs and others v. Prabhat Singh [(2012) 13 SCC 412], it was held by the Supreme Court that "the Court should not fall prey to any sympathy syndrome of issue direction for compassionate appointment dehors prescribed norms".

13. It is also apropos to point out that the issue involved herein came up for consideration in WP.(MD)No.7016 of 2011 by way of reference to the Full Bench of this Court, which answered the same by order dated 11.03.2020, paragraph 32(a) of which is profitably extracted hereunder:

"Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the Scheme that has been framed by the employer. Any deviation from the Scheme is not permissible."

14. Therefore, this Court cannot take a different stand contrary to the recent G.O. (Ms).No.18, Labour and Employment (Q1)



Department, dated 23.01.2020 as well the decision of the Full Bench of this Court in WP.(MD).N0.7016 of 2011 dated 11.03.2020.

15. In such view of the matter, this writ petition is liable to be dismissed and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Department of Rural Development &
Panchayat Raj,
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
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Panagal Building, 4th Floor,
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3. The District Collector,
Coimbatore District
Coimbatore.
4. The Commissioner,
Panchayat Union,
Pollachi North,
Coimbatore District.

+1cc to Government Pleader, SR.No.25691

W.P.No.6859 of 2013

UM(CO)
RGA(14/07/2021)