



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P.No.12831 of 2021
and W.M.P.No.13622 of 2021

U.Vinayaga Moorthi

... Petitioner

Versus

1.The Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Cuddalore District,
Cuddalore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in connection with the impugned orders passed by him in Na.Ka.No.PA3/605/2013 dated 22.04.2020 and Na.Ka.No.C1/E1/4882/2019 dated 25.02.2021 and quash the same and direct the respondents to appoint the petitioner as Junior Assistant on compassionate grounds and grant him all consequential service and monetary benefits and grant such other further relief as this Court may deem fit in the circumstances arising out of the case.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.C.Kathiravan
Government Advocate

O R D E R

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in connection with the impugned orders passed by him in Na.Ka.No.PA3/605/2013 dated 22.04.2020 and Na.Ka.No.C1/E1/4882/2019 dated 25.02.2021 and quash the same and



direct the respondents to appoint the petitioner as Junior Assistant on compassionate grounds and grant him all consequential service and monetary benefits.

2.The petitioner who is the son of the deceased employee has filed this writ petition to appoint him as Junior Assistant on compassionate grounds. The petitioner's father by name Uthirapathi has served in the Rural Development Department of Cuddalore District from the year 1972. The petitioner's father entered the service as Record Clerk in Keeripalayam Panchayat Union of Cuddalore District on 29.05.1974 and worked for about six years. Thereafter, the petitioner's father was promoted as Junior Assistant at Keeripalayam Panchayat Union on 10.01.1991. While the petitioner's father was serving as Junior Assistant at Kurijipadi Panchayat Union of Cuddalore District, he was placed under suspension for certain irregularities. Three Charge Memos were issued to the petitioner's father during the year 1996 to 1998 by the Director of Rural Development, Chennai. Criminal cases were also registered against the petitioner's father. Though the petitioner's father was acquitted in all the criminal cases in 1998, disciplinary proceedings were initiated against the petitioner's father. Though the petitioner's father reached the age of superannuation on 30.04.2013, he was not allowed to retire from service by proceedings of the District Collector dated 30.04.2013 in view of the pendency of the disciplinary proceedings against the petitioner's father. Unfortunately, the petitioner's father expired on 25.01.2019 leaving behind his wife, daughter and the petitioner. In view of the death of the petitioner's father, disciplinary proceedings could not go further. However, the petitioner after receiving the DCRG benefits of the deceased made a representation for compassionate appointment. However, the 2nd respondent by the impugned order dated 22.04.2020 rejected the application, as the petitioner's father reached the superannuation and he was not allowed to retire because of pendency of the disciplinary proceedings. The respondents were of the view that the Government servant was not allowed to retire from service due to pendency of disciplinary proceedings and died after the age of superannuation and hence, his son is not entitled for compassionate appointment. Challenging the order of the District Collector, the above writ petition has been filed.

3.It has been held by the Hon'ble Supreme Court of India that right to seek compassionate appointment should be permitted by law or by the service Rules. The object of giving compassionate appointment is also relied on several judgements of this Court as well as the Hon'ble Supreme Court. The petitioner's father in this case served his full term. The petitioner has also received the retirement benefits. Because of the pendency of the disciplinary proceedings against the the



petitioner's father, he was not allowed to retire. The petitioner's father was also placed under suspension. In view of the death of the petitioner's father, the petitioner is entitled to get all the service benefits. In such circumstances, the application made by the petitioner seeking for compassionate appointment is not permissible. Hence, this Court does not find any infirmity or illegality in the order of 2nd respondent rejecting the application of the petitioner seeking compassionate appointment.

4.The learned counsel appearing for the petitioner, after the order is dictated, wanted to make further submissions, relying upon a Government letter dated 04.03.1991. Hence, the writ petition is posted under the caption 'For Clarification' on 23.07.2021 and the matter is again taken up on that day.

5.The letter dated 04.03.1991, relied upon by the learned counsel for the petitioner, reads as follows:

GOVERNMENT OF TAMIL NADU
Labour and Employment Department
Letter No.43007A/Q1/90-3 dated 4.3.1991

Sub: Public Services Employment assistance to families of deceased Government employees during the period of extension of Service - further clarifications to G.O.Ms.No.41 Employment Services dated 23.3.88.

Ref: G.O.Ms.No.41, Employment services dated 23.3.88

In the G.O. Cited, orders have been issued that the son/unmarried daughter/wife/husband of Government servants, who die, during the period of extension of service is eligible for grant of employment assistance on compassionate grounds.

In this connection there is a point for clarification whether the dependent of Government servants who die during the period of suspension which was extended after the date of superannuation and was ordered to be created as extension of service are eligible for consideration for appointment under compassionate grounds.

The Government examined in detail this point and direct the dependents of Government servants who die during the period of suspension, which was extended



WEB COPY

after his/her actual date superannuation and was ordered to be treated as extension of service, are also eligible for appointment on compassionate grounds.

Yours faithfully,

sd/-

for Secretary to Government

6.The clarification letter produced by the learned counsel appearing for the petitioner is quite contrary to the directions issued by the Government in several executive instructions.

7.The learned Government Advocate is not inclined to get proper instructions from the Government. However, seeing the issue on merits, this Court is also of the view that the clarification issued by the Government is unethical. It will be against public policy to give benefit to the legal heirs of employees to seek compassionate appointment after the death of Government servant who had served his complete tenure till superannuation. The Government does not provide or enable the legal heirs of retired employees to seek appointment on compassionate ground. If the Government intends to give the benefit of seeking compassionate appointment to the legal heirs of employees whose retirement was postponed due to pendency of disciplinary proceedings, that will be not only unethical but also against public policy. The Government cannot have a policy which is defective and discriminatory. If the Government letter is given effect to in one case, that may pave way for legal heirs of all the retired employees to seek appointment on compassionate ground. In this case, no statutory Rule is produced to show that there is any statutory support or Regulation to sustain such clarification. Hence, this Court is not inclined to grant the relief sought for by the petitioner based on the only letter of Government, which is not supported by service Rules. There is no estoppel against statute.

8.Accordingly, this writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



ssr

To

WEB COPY

1.The Secretary to Government,
Rural Development & Panchayat Raj Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Cuddalore District,
Cuddalore.

+1cc to Mr.M.Muthappan, Advocate Sr.35433

+1cc to the Government pleader Sr.35946

W.P.No.12831 of 2021
and W.M.P.No.13622 of 2021

mg[col
srg 23/08/2021