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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MRS. JUSTICE S.ANANTHI**

W.P. (MD)No.4591 of 2020
(Through Video Conferencing)

M.Suthagar : Petitioner

Vs.

1.The Registrar (General)
Madras High Court,
Madras.

2.The Principal District Judge,
District Court,
Ramanathapuram
Ramanathapuram District.

3.The Judicial Magistrate,
Mudukulathur Court,
Mudukulathur 623 704
Ramanathapuram District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd respondent in No.Nil dated 13.01.2020 and quash the same and to direct the 2nd respondent to provide the employment on compassionate grounds affording him adequate opportunity.

For Petitioner : Mr.A.John Vincent
For Respondents : Mr.N.Tamilmani

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner, who is the son of the deceased employed, who died in harness on 24.04.2018 sought for appointment on compassionate ground. It was rejected by the impugned order on the premise that the mother of the petitioner is receiving a total sum of Rs.12,772/-, which is inclusive of her salary, Dearness Allowance, House Rent Allowance and Medical Allowance, as an Anganwadi worker.



2.The learned counsel for the petitioner submitted that the aforesaid amount would not be sufficient enough to manage the family. Pursuant to the death of the deceased father, no pension is forthcoming, the mother of the petitioner herself has applied for compassionate appointment. There was no suppression involved, as the factum of employment was made known, though subsequently. Since the application has been made within time - 28.08.2019, the order requires to be set aside.

3. The learned counsel for the respondent submitted that the fact that the mother of the petitioner is employed as an Anganwadi worker is not in dispute. Since the family is not in penury, the impugned order has been rightly passed.

4. Two applications have been made. One by the wife of the deceased and the other by the son, namely, the petitioner. The mother made an application on 05.01.2019 followed by another one by the petitioner on 28.08.2019.

5. Though the factum of employment was not disclosed initially, it was done subsequently. The very fact that the mother of the petitioner sought for employment itself would show that the meagre income received by her as salary including all the benefits for a sum of Rs.12,772/- would not be sufficient to maintain the family. Admittedly, the salary received by the deceased father is not available any longer. The mother of the petitioner is working only as an anganwadi worker, which is a basic employment. There is also another sister, which, the petitioner has to take care of. The question of financial constraint and penury has to be seen on the basis of facts governing. The question for consideration is as to whether the sum of Rs.12,772/- in total received by earning member of the family would be sufficient enough for a living. We are of the view that the aforesaid amount would not be sufficient. Perhaps that is the reason why she made an application. Had her application being considered and job granted, she would have given up the earlier employment and would be in a better position to manage the family. Though the impugned order says that the family pension is being received, it appears that it is not factually correct. Thus, looking from any perspective, we are of the view that the order impugned cannot be sustained. Accordingly, the same is set aside. Consequently, the respondent No.2 is directed to reconsider the case of the petitioner within eight weeks from the date of receipt of a copy of this order. We make it clear that if, on enquiry, the 2nd respondent comes to the conclusion that the family pension is being received, then, the petitioner is not entitled for the said relief.



6. The writ petition is allowed on the terms indicated above.
No costs.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Registrar (General)
Madras High Court,
Madras.

2.The Principal District Judge,
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Ramanathapuram District.

3.The Judicial Magistrate,
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Mudukulathur 623 704
Ramanathapuram District.

+1 CC to M/s.A.JOHN VINCENT, Advocate SR-11668[F] dated 17/03/2021

Order made in
W.P. (MD)No.4591 of 2020
Dated: 16.03.2021

NSM(CO)
TR(30.03.2021) 3P 5C