



WEB COPY

W.A.(MD)No.1039 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1039 of 2020

and

C.M.P (MD) .No.5691 of 2020

1. The District Collector,
Virudhunagar District.

2. The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar District.

3. The Tahsildar,
Kariyapatti Taluk,
Virudhunagar District.

4. The Tahsildar,
Aruppukottai Taluk,
Virudhunagar District.

... Appellants/Respondents

Vs.

Muthuvijayan

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.135 of 2016, dated 29.06.2020.

PRAYER In W.P. (MD) No.135 of 2016

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 Appellants : Mr.R.Baskaran,
Standing Counsel for Government

For Respondent : Mr.J.Anand Kumar



J U D G M E N T

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.R.Baskaran, learned Government Counsel appearing for the appellants and Mr.J.Anand Kumar, learned counsel appearing for the respondent-writ petitioner.

2. This appeal by the District Collector, Virudhunagar District and three others is directed against the order dated 29.06.2020, in W.P(MD) No.135 of 2016. The respondent filed the writ petition challenging the order passed by the first appellant dated 28.03.2015 and to direct the appellants to provide appointment on compassionate ground to the respondent on the basis of his educational qualification.

3. The undisputed facts are that the respondent's father Sivalingam was serving as a Village Administrative Officer and died in harness on 11.11.1998 leaving behind the petitioner, his mother and three other siblings. The request of the respondent for grant of appointment on compassionate ground was rejected by the order dated 28.03.2015, on the ground that the writ petitioner's brother is well placed and he is a Doctor and also observed that the writ petitioner's sister's application filed for grant of appointment on compassionate ground has been rejected on the ground that the family is not in indigenous circumstances.

4. The case of the writ petitioner is that the application filed by the sister was never rejected and no such communication was received by the writ petitioner's sister. The learned Writ Court after conducting the factual exercise came to the conclusion that the appellants were not able to conclusively prove that the order of rejection has been served on the writ petitioner's sister and therefore, it is deemed that the right to consider for compassionate appointment was continuing with the family of the writ petitioner and subsequently, the writ petitioner made a request and the Court direct that the request to be considered.

5. In our opinion, the learned Writ Court on taking note of the peculiar facts and circumstances, has moulded the relief and issued direction. Therefore, we are not inclined to substitute our views to that of the views recorded by the learned Writ Court, which we find after appreciating the factual position. One of the direction issued by the learned Writ Court in Paragraph No.11, does not laid down the correct legal principle, namely, the learned Writ Court has directed that the appellant should offer employment to the writ petitioner commenced proportionate to his qualification. This is impermissible under the Rule as any compassionate appointment can be made only in the entry level post. Therefore, to that extent, the order passed in the writ petition calls for interference.



6. Accordingly, the **Writ Appeal is partly allowed** and while confirming the directions issued by the learned Writ Court to offer employment to the respondent-writ petitioner on compassionate ground, we delete the direction issued by the learned Writ Court to give employment proportionate to the writ petitioner's qualification and the appointment shall be given to the post in accordance with the relevant Rules. This direction be complied with within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pkn

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:

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