



WEB COPY

W.P(MD)No.13290 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P (MD) No.13290 of 2020

and

W.M.P. (MD) No.11114 of 2020

M.Gnanaprakasam

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Director of Medical and Rural Health Services,
No.359, Annasalai, DMS Complex,
Teynampet, Chennai- 600 006.

3.The Deputy Director of Health Services,
O/o. The Deputy Director of Health Services,
Kovilpatti, Thoothukudi District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceeding letter O.Mu.En.6814/A4/2018 dated 02.11.2018 issued by the third respondent and quash the same and consequently direct the respondents to consider the representation dated 29.10.2018 to the first respondent with the receipt No.0602 given on public grievances day and provide compassionate appointment.

For Petitioner : Mr.C.Masilamani

For Respondents : Mr.A.K.Manickam
Standing Counsel.

ORDER

This Writ Petition has been filed seeking the relief of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceeding letter O.Mu.En.6814/A4/2018 dated 02.11.2018 issued by the third respondent and quash the same and consequently direct the respondents to consider the representation dated 29.10.2018 to the first respondent with the receipt No.0602 given on public grievances day and provide compassionate appointment.



2.The petitioner's wife namely Arockia Selvi was provisionally selected by the Medical Service Recruitment Board, Chennai and temporarily appointed as a "Nurse" on consolidated pay in the Tamilnadu Medical subordinate Service on 23.08.2016. While she was in service, she died on 08.10.2018 due to kidney failure. The petitioner made an application on 29.10.2018 to the respondent seeking appointment to him under compassionate grounds in the respondent Department. By order dated 02.11.2018 in O.Mu.No.6814/A4/2018, the respondent has rejected the said application on the ground that the deceased employee was served in a consolidated pay scale. Therefore, the petitioner is not eligible for seeking appointment on compassionate ground. Challenging the impugned order, this Writ Petition has been filed.

3.The learned Standing Counsel appearing for the respondent submitted that as per G.O.(Ms)No.18, Labour and Employment(Q1) Department dated 23.01.2020, it is stated that no appointment on compassionate grounds can be provided when the deceased employee is under contractual basis or whose service is not regularised.

4. In ***State of Madhya Pradesh and Others Vs. Amit Shrivastava [(2020) 10 SCC 496]***, the Hon'ble Apex Court has observed as follows:

"17. In our view, the aforesaid plea misses the point of distinction between a work~charged employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work~ charged employee and it is nobody's case that he has not been paid out of work~charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and krammonati. This will, however, not ipso facto give him the status of a regular employee.

...
...

20. The conclusion to be drawn from the aforesaid is that attaining the status of permanent employee would entitle one only to a minimum of the pay~scale without any increments. It is this aspect which was sought to be emphasised by learned counsel for the respondent to contend that this would not apply, because in the present case, krammonati and increments were given. However, we may note that in the order dated 7~2~2002 granting the benefit of monetary krammonati to employees, including the respondent's father, it was specified that the same would not affect the posts of such employees.

21. The moot point, thus, is that having been granted increments, could a person be said to have reached the status of a regular employee? In order to



answer this question, we may note that while considering this aspect in the aforesaid judgment, it was specifically opined that even if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in the negative terms." We say so, not with the objective of giving a licence to the appellants to withdraw any of the benefits, which are already granted, and we make this unequivocally clear. However, we cannot at the same time make a conclusion that the status acquired is that of a regular employee upon having achieved the status of a permanent employee in service.

22. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a 'permanent' status and a 'regular' status appears to have been lost sight of in the impugned judgments."

5.Considering the above submission of the learned Standing Counsel and in the light of the G.O.(Ms)No.18, the service of the petitioner's wife was not regularised and she has been received salary only on consolidated pay and therefore the respondent has rightly rejected the claim of the petitioner and there is no warrant to interfere with the said order passed by the respondent. I find no illegality or irregularity in the order passed by the respondent rejecting appointment on compassionate grounds to the petitioner.

6.In fine, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 District Collector,
Thoothukudi District, Thoothukudi.

2.The Director of Medical and Rural Health Services,
No.359, Annasalai, DMS Complex, Teynampet, Chennai- 600 006.

3.The Deputy Director of Health Services,
O/o. The Deputy Director of Health Services,
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+1 CC to M/s.GP (SR-27392[F] dated 26/08/2021)

W.P (MD) No.13290 of 2020
24.08.2021

RK (13.09.2021) 4P 5C