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W.P(MD)NO.18016 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.10.2021**

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P (MD) NO.18016 of 2021

M.Divahar

: Petitioner

vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Principal District Administrative Officer,
Principal District Court,
Sivagangai District,
Sivagangai.

3.The Principal District Judge,
Sivagangai,
Sivagangai District.

: Respondents

(R.3- *suo-motu* impleaded as
per the order of this Court,
dated 04.10.2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records rejection orders dated 12.08.2021 and 01.09.2021, passed by the second respondent herein to issue petitioner a suitable government job based on his qualification under compassionate ground by considering the order passed in W.P. (MD)No.6606 of 2020, dated 09.07.2020 by this Court.

For Petitioner	: Mr.T.Bala Rathinakumar
For Respondents	: Mr.P.Thilak kumar
	Government Pleader
	for R.1
	: Mr.N.Tamil Mani
	for R.2

O R D E R

[Order of the Court was made by **K.MURALI SHANKAR.,J.**]

The petitioner has filed the above Petition seeking issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders, dated 12.08.2021 and 01.09.2021, passed by

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the second respondent and to quash the same and consequently, to direct the respondents to give a suitable Government job to the petitioner based on his qualification under compassionate ground, by considering the orders passed in W.P(MD)No.6606 of 2020, dated 09.07.2020 by this Court.

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2.The facts not in dispute are that the petitioner is the son of one Murugesan and Rasia Mani, that the petitioner's father Murugesan was working as a Junior Bailiff in the Court of Principal District Munsif Court, Manamadurai, Sivagangai District, that his mother Rasia Mani was working as a Senior Bailiff in the Principal District Court of Sivagangai, that the said Murugesan had died on 20.10.2018, while in service and that his mother Rasia Mani got retired from service on 30.06.2019 on attaining superannuation.

3.It is not in dispute that the petitioner has submitted a requisition, dated 05.11.2019, claiming compassionate appointment as his father died in harness on 20.10.2018. The learned Principal District Judge, Sivagangai, has returned the petitioner's application vide communication dated 22.11.2019, raising certain queries.

4.The petitioner, without resubmitting the application after rectifying the defects pointed out therein, has approached this Court by filing a Writ Petition in W.P(MD)No.10203 of 2021, claiming the very same relief now claimed in the present Writ Petition and the Division Bench of this Court vide order, dated 17.06.2021, disposed of the same by issuing the following directions:

"7.Therefore, we dispose of the Writ Petition with a direction to the petitioner to send an appropriate reply to the queries raised and resubmit the application, enclosing the relevant Government orders and documents to prove as to how he is eligible to secure appointment on compassionate grounds. If such reply is submitted and the application is resubmitted with the appropriate reply to the queries raised, the second respondent shall consider the same and pass orders on merits and in accordance with law within twelve weeks from the date of re-presentation of the application."

5.In pursuance of the orders of this Court passed in W.P(MD) No.10203 of 2021, the petitioner has resubmitted his application, dated 07.08.2021 and the learned Principal District Judge has returned the petition by raising the main query that when the petitioner's father A.Murugesan died on 20.10.2018, his mother Tmt.P.Rasiyamani was working as senior bailiff and got retirement on 30.06.2019 and as such, the applicant has to produce the Government Order, if any, to show that even if there is already any earning member in the family of the Government servant, who died in harness,



the other family member of the deceased Government servant is also eligible for the compassionate appointment.

6.The learned Principal District Judge has also raised two other formal quires that since the petitioner's father A.Murugesan was working lastly as Junior Bailiff in the Principal District Munsif Court, Manamadurai, the application for compassionate appointment and other documents are to be submitted only through proper channel i.e., through Principal District Munsif, Manamadurai and that the Applicant has submitted his application addressed to the Chief Administrative Officer instead of Principal District Judge.

7.Thereafter, the petitioner has again resubmitted the application, dated 25.08.2021 and the learned Principal District Judge, has again returned the petition vide order, dated 01.09.2021, raising the first query made in the return, dated 12.08.2021. The learned Counsel for the petitioner would submit that though the learned Principal District Judge, has passed an order, as if the requisition of the petitioner was returned, has practically rejected the claim of the petitioner and that is why the petitioner was constrained to approach this Court again for the very same relief claimed in the earlier petition. As rightly pointed out by the learned Counsel for the petitioner, the only query raised in the return order, dated 01.09.2021, has already been raised in the earlier return, dated 12.08.2021 and that since the petitioner has not given any reason or explanation for the said query, the learned Principal District Judge, has practically rejected the claim of the petitioner, even though it has been shown that the application was returned.

8.The petitioner in the previous writ petition as well in the present petition, has impleaded the Principal District Administrative Officer of Sivagangai District, as the second respondent, apart from the first respondent, District Collector. But, it is pertinent to mention that the impugned orders of return were made only by the Principal District Judge and hence this Court has *suo-motu* ordered for the impleadment of the Principal District Judge of Sivagangai District, as the third respondent.

9.Coming to the merits of the case, the main ground for rejecting the claim of the petitioner, shown by the respondent is that the petitioner's mother was working as a Senior Bailiff, at the time of the death of his father and that since his mother was already working, the petitioner is not entitled to claim compassionate appointment. The learned Principal District Judge has referred to G.O.Ms.No.998, Labour and Employment Department, dated 02.05.1981, whereunder, the Government issued the orders on the clarifications raised and the relevant G.O is extracted hereunder for better appreciation;



"The dependant of a Government servant who died in harness leaving his family in indigent circumstances, is eligible to avail himself of the concession granted in the Government Orders read above even when there is already an earning member in the family, if, in the opinion of the appointing authority, the family is in indigent circumstances. Before deciding the indigent circumstances of the family, the appointing authority should take into account the number of dependants left, the movable and immovable asset and liabilities left by the deceased Government servant, the income of the earning member in the family, as also his liabilities. However, the concession under the Government orders read above should not be granted to more than one dependent in the family of the deceased Government servant".

2.The Government have since reviewed the orders referred to in paragraph I above. They consider that according to existing orders, there is scope for abuse of the above concession on the plea that the family of the Government servant who died in harness is in indigent circumstances eventhough there is already any earning member in that family. The Government have, therefore, decided that if in the family of the Government servant who died in harness, there is already an earning member, irrespective of the fact that the member is employed in Government service or elsewhere, other dependent members of the deceased Government will not be eligible for the grant of concession granted in the Government orders read above.

3.The Government accordingly, in partial modification of the orders issued in Government Memo, read above direct that if there is already any earning member in the family of the Government servant who died in harness, the other dependants of the deceased Government servant will not be eligible for the concession of appointment in Government departments and Government undertakings without reference to Employment Exchange.

10.It is pertinent to mention that in view of the orders passed in some writ petitions by this Court in this regard, the Government of Tamil Nadu had examined the whole issue of compassionate appointment and issued the comprehensive guidelines in G.O.Ms.No.18, dated 23.01.2020 in supersession of all the earlier



orders and whereunder, listed out the legal heirs/near relatives of the deceased Government servant, who are all eligible for compassionate ground appointment

"(i) ...

(ii) ...

(iii) ...

(iv). If any person, in the deceased Government servant's family was employed even before the death of the Government servant, but was living separately without extending any help to the family, then the case of the other eligible dependant will be considered."

11.In the same GO, under the heading "General", it is necessary to refer the third Clause,

"(iii) The concession under the scheme will not be granted to more than one dependant in the family of the deceased Government servant".

12.In the case on hand, as already pointed out, when the petitioner's father had died on 20.10.2018, the petitioner's mother was very much working in the Principal District Court, Sivagangai. As rightly pointed out by the learned Counsel for the respondent, the petitioner himself has specifically admitted in the affidavit filed in support of the writ petition that the petitioner has been living with his wife along with his father and mother and his younger sister as joint family, that his younger sister subsequently got married and was living separately, that after the petitioner's father's death, there were some family problems regarding to meet out the financial crisis and that the petitioner has been living separately along with his family without any monetary support from the petitioner's mother. The petitioner has further stated that there was a family quarrel between his sister and her husband and due to that, she was also living with the petitioner and that the petitioner has been looking after her family.

13.It is pertinent to mention that even according to the petitioner, on the date of death of his father, the petitioner and his wife were living with his mother. The learned Counsel for the petitioner has relied on a Judgment of this Court passed in W.P(MD) No.6606 of 2020, dated 09.07.2020 and wherein, the Government servant had left behind the widow and her three children and one of the children subsequently got a Government job on merits and not on the basis of compassionate ground. When it was shown that the said son was living separately leading his own life and never turned back and never come and help the family of the deceased Government servant, the learned Single Judge of this Court, applying Clause 4 of G.O.Ms.No.18, has allowed the Writ Petition and directed the



respondents therein, to grant appointment on compassionate ground. The facts of the above case and the case on hand are different and moreover, the decision rendered by the learned Single Judge of this Court, cannot be considered as a binding precedent on this Court.

14.As already pointed out, the petitioner has pleaded vaguely that he was living separately and that too, after the death of his father. It is pertinent to note that compassionate appointment cannot be claimed as a matter of right and it is only a scheme devised by the Government to help the needy legal heirs whose lives are in distress, after the Government servant dies in harness.

15.Considering the above, it is very much clear that as per the scheme of compassionate appointment, the petitioner is not entitled to get the compassionate appointment and as such, the return/rejection of the petitioner's claim by the learned Principal District Judge, Sivagangai, cannot be found fault with. Hence, this Court concludes that the Writ Petition is devoid of merits and the same is liable to be dismissed.

16.In the result, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

lr

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,
Sivagangai District,
Sivagangai.

2.The Principal District Administrative Officer,
Principal District Court,
Sivagangai District,
Sivagangai.



3.The Principal District Judge,
Sivagangai,
Sivagangai District.

+1 CC to M/s.SPL.GP (SR-31171[F] dated 05/10/2021)

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ORDER MADE IN
W.P (MD) NO.18016 of 2021
04.10.2021

CM(ASO) (CO) /RS (22.10.2021) 7P 5C