



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.13320 of 2014

and

M.P (MD) No.2 of 2014

and

W.M.p (MD) No.8625 of 2016

M.Raja

.. Petitioner

Vs.

1.The Director of College Education,
Chennai.6

2.The Principal,
Raja Sarboji Government College,
Thanjavur.

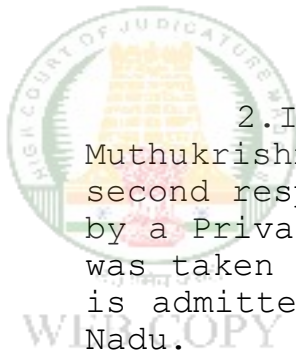
... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings passed by the first respondent in Na Ka No.7058/B1/2013 dated 14.07.2014 and consequent proceedings of the 2nd respondent in Na Ka 726/C 2014 dated 25.07.2014 and quash the same and consequently direct the respondents to reinstate the petitioner into service and regularise his service from the date of his appointment with all attendant benefits.

For Petitioner	:	Mr.Kannan for M/S. Veera Associates
For R1	:	Mr.M.Lingadurai Government Advocate

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent in Na Ka No.7058/B1/2013 dated 14.07.2014 and consequent proceedings of the second respondent in Na Ka 726/C 2014 dated 25.07.2014 and consequently direct the respondents to reinstate the petitioner into service and regularize his service from the date of his appointment.



2.It is stated that the petitioner's father by name Muthukrishnan was appointed as Lab Assistant in the office of the second respondent in the year 1963, at that time the college was run by a Private Management. Subsequently, the second respondent college was taken over by the Tamil Nadu Government in the year 1965 and it is admitted that the college is now run by the Government of Tamil Nadu.

2(i).The petitioner's father died on 07.03.2000, while he was in service as Store Keeper, leaving behind his first wife by name Raniammal @ Gnanammal and the petitioner's mother, who is the second wife, the petitioner and his two sisters, who are the children of Muthukrishnan, born through his second wife.

2(ii).After the death of the petitioner's father, the petitioner submitted an application seeking appointment on compassionate ground. Since the first wife by name Raniammal gave an application for getting retirement benefits, the second respondent approached the Court to recognize the second wife before making her eligible for getting retirement benefits. The petitioner filed an application for succession certificate in O.P.No.40 of 2012 before the Principal Subordinate Court, Thanjavur. The succession certificate was granted to the petitioner, based on the compromise between the parties. Thereafter, the petitioner made an application to the second respondent for getting a job on compassionate ground. After considering the succession certificate, the first respondent appointed the petitioner as Junior Assistant in the second respondent college, by order dated 30.11.2010. The petitioner also joined in the second respondent college as Junior Assistant and continued in service. When the proposal for regularization of service of the petitioner was sent to the first respondent by the second respondent, the first respondent returned the same for want of some particulars. Thereafter, the first respondent by the impugned order 14.07.2014 terminated the service of the petitioner on the ground that his appointment on compassionate ground, was contrary to G.O.Ms.No.34 Labour and Employment Q1 Department, dated 16.04.2002. The reason for denying regularization is that the petitioner is the son of the deceased employee through the second wife and that therefore, the petitioner is not entitled for a job on compassionate ground. Pursuant to the order of the first respondent, the second respondent terminated the service of the petitioner as Junior Assistant by citing the impugned order passed by the first respondent, dated 14.07.2014.

3.The learned counsel appearing for the petitioner submitted that the petitioner, who is the son of the deceased Government employee is a dependent and entitled to succeed to the estate of the deceased, even though he is a son born through an invalid marriage of the deceased. The learned counsel also relied upon a few judgments of this Court to support his contention. In the case of



DEPARTMENT SECRETARIAT, CHENNAI, reported in **2008(6) CTC 806**, this Court has held as follows:

"5. Law is well settled that even if the second marriage of the petitioners father is void, as per Te Hindu Marriages Act, the children born through such void marriage cannot be held to be illegitimate. In the factual situation here, the first respondent itself has admitted that in respect of the pension and DCRG, which are property rights the petitioner is conferred such right by treating him as legal heir of the erstwhile employee of the first respondent. In such circumstances, the strange conclusion by the first respondent that the petitioner would not be entitled for compassionate appointment simply because his father has married the second wife which is a void marriage. Such reason is absolutely not sustainable.

6. In this context, it will be useful to refer to a Division Bench Judgment, headed by Mr. Justice S.J.Mokhopadhyaya and Mr. Justice V.Dhanapalan, in the case of H.Anwar Basha v. Registrar General (Incharge) reported in (2008) 5 MLJ 795 wherein it is held by relying upon the various other earlier judgments of the Apex Court as well as this Court that what is required to be considered for compassionate ground appointment is that the petitioner is a dependent of the deceased Government Servant. It is also held that the son of the deceased person remains to be the son whether he is legitimate or illegitimate son of the parents. The illegitimacy of the marriage between the petitioners father and the petitioners mother cannot stand as a stumbling block for the dependent to get employment. The Division Bench has held as follows:-

I. Even on assuming that the marriage is irregular or void, if the petitioner is a dependant of the deceased Government Servant, he would be entitled for the benefit. II. The eligibility criteria prescribed to get employment assistance to families of the deceased Government Servants would make it clear that the dependants of the deceased Government Servant include the son and it does not denote whether the son should be legitimate or illegitimate son of the parents III. In order to achieve the object of providing employment assistance to the bereaved family, it would be necessary to examine whether the dependant is supporting the family to mitigate the sufferings of that family, relieving the bereaved family from the indigent circumstances. Therefore when the object is met, the question of whether the delinquent dependent is a legitimate or illegitimate legal heir cannot be a stumbling block for the dependant to get employment.



7. Another Division Bench of this Court in the case of Geetha Ramani v. The District Educational Officer, Kancheepuram, reported in (2004) 4 M.L.J. 177 presided over by Mr. Justice P.K.Misra and Mr. Justice S.R.Singharavelu, while referring to the Government Order in G.O.Ms.No.560 dated 03.08.1997 wherein it is made clear that the compassionate appointment shall not be extended to the children born to a second wife. The Division Bench has held as follows:-

The intention under the G.O. issued for employment on compassionate ground is to give protection to the members of the family of the deceased employee. By no stretch of imagination, it can be stated that the children born through the second wife, even though the second marriage is void, are not members of such family.

8. Another un-reported judgment of this Court in the case of K.Velankannan v. The Government of Tamil Nadu and two others in W.P.No.16211 of 2007, dated 30.08.2007 by Mr. Justice Chockalingam by referring to similar G.O.Ms.No.34, Labour and Employment/01 Department dated 16.04.2002 this Court has held that there cannot be two criteria for the purpose to give protection for Family Pension and DCRG and deny the same for compassionate appointment. In the said decision in paragraph 6 it is held as follows:-

6. Contrary to the above, learned counsel for the State would submit that in the instant case, it is an admitted fact that the petitioner is the son of the deceased employee through his second wife and in the G.O.Ms.No.34 Labour and Employment/01 Department dated 16.04.2002, it is made clear that the children born out of the void marriages are entitled for the benefit in respect of the property of the deceased Government Servant i.e., Family Pension and Death-cum-Retirement Gratuity and that compassionate appointment cannot be equated to the status of the property of the deceased. Under such circumstances, while it is an admitted fact that he is the son through the second wife, he is not entitled to have the appointment, but he got appointment. Hence, the cancellation of appointment made by the second respondent was perfectly correct and it has got to be dismissed.

4. Again, in an unreported judgment of this Court by a learned Single Judge ***dated 23.06.2014 in W.P.No.34961 of 2013***, in the case of ***C.BANUMATHI -VS- THE ASSISTANT DIRECTOR, HEALTH SERVICES, HEALTH***

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DEPARTMENT AND OTHERS, it is held as follows:

"33.In fact, learned Government Advocate produced another clarification letter in Letter(Ms) No.34, Labour and Employment (Q1) Department, dated 16.04.2002. The letter dated 16.04.2002, excludes the claim of the compassionate appointment to the illegitimate children, while they are entitled for other benefits such as DCRG and family pension. I am not in agreement with the aforesaid Letter of the Labour and Employment Department, dated 16.04.2002, in view of the judgments cited by the learned counsel for the third respondent and in fact, learned counsel for the petitioner has not disputed the claim of the children of the third respondent and he only claims that the compassionate appointment shall be provided to the children of the petitioner, since the third respondent is in Government service and the petitioner and her family members are entirely depending on the earnings of the deceased Chandran."

5.Again, a Division Bench of this Court by order **dated 12.09.2016 in W.P.No.36158 of 2015** in the case of **UNION OF INDIA REP. BY THE GENERAL MANAGER SOUTHERN RAILWAY, MADURAI AND OTHERS -VS- S.VENNILA AND ANOTHER**, has held as follows:

"10.In the instant case, admittedly, the first respondent/applicant is none other than the second wife of the deceased L.Somu. The third writ petitioner has rejected the claim of the first respondent mainly on the ground that she is not the legally wedded wife of the deceased L.Somu. It is a settled principle of law that as per Section 16 of the Hindu Marriage Act, 1955, the children born through second marriage have become legitimate. Under the said circumstances, the son of the first respondent/applicant is legally entitled to get an appointment on compassionate ground.

6.In yet another judgment of this Court by a learned Single Judge in **W.P(MD)No.6007 of 2012 dated 16.03.2017** in the case of **E.GANESAN -VS- THE STATE OF TAMIL NADU, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, RURAL DEVELOPMENT DEPARTMENT AND OTHERS**, it is held as follows:

"2.Challenging the rejection of the compassionate appointment on the ground that the petitioner being a son through the second wife of deceased S.Essakki, who was working as a office Assistant in Rural Development Department, Koripalayam Panchayat Union, the petitioner has come forward with this writ petition. The issue, whether the children born through the second marriage are entitled to be considered for compassionate appointment is no longer Res integra. This Court had in several cases has held that children born through second marriage are also presumed to be legitimate children, in view of Section 16 of the Hindu



Marriage Act. In the Division Bench judgment of this Court reported in 2008(5)MLJ 795(H.Anwar Basha vs. Registrar General 9in charge), it has been held even on assuming that the marriage is irregular or void, the children would be entitled to be considered for compassionate appointment, if he/she satisfied other prescribed parameters. The said view has been followed by this Court in the judgment reported in 2009(1) MLJ 54 (N.Panneerselvam vs.Secretary to Government, Public Works Department, Chennai and others)."

7.The issue is again considered in another judgment of this Court in **W.P(MD)No.8592 of 2009 dated 17.04.2018**, wherein it is held as follows:

"16.As the law is well settled, as held in the said judgement, as far as the children born through the illegitimate marriages is concerned, they would be entitled for the benefits for compassionate appointment on the ground that the illegitimate son or daughter can also be the legal heir of the deceased Government employee. Therefore, considering all these aspects and the law laid down in this regard, as has been held in the aforesaid cases, this Court is of the clear and considered view that, the impugned order shall not stand in the legal scrutiny and is liable to be quashed and accordingly, it is quashed. It is submitted that during the pendency of the writ petition, the petitioner is having the benefit of stay of the impugned order. Accordingly he is continued to work.

8.Referring to the judgment of the Hon'ble Supreme Court, in the case of **UNION OF INDIA AND OTHERS -VS- K.P.TIWARI**, reported in **(2003) 9 Supreme Court Cases 129**, the learned counsel submitted that the petitioner, who was appointed in the year 2010 and continued in service for more than 11 years, cannot be terminated and it is not appropriate to disturb the petitioner after this length of time. It is pointed out that there was no suppression of facts.

9.The learned counsel then referred to G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, and submitted that the Government Order does not disable the son born through the second wife to get employment on compassionate ground. This Court has also independently considered the eligibility of the illegitimate son born through the second wife to get appointment on compassionate ground.

10.Section 16 of the Hindu Marriage Act, which reads as follows:

"Section 16 of the Hindu Marriage Act, 1955:-

[16 Legitimacy of children of void and voidable marriages.

(1)Notwithstanding that marriage is null and void under



legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)*, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]

Section 16(2) of Hindu Marriage Act, preserves the rights of a son born through the second wife to claim legitimate right as a legal heir to the property of his father. The petitioner has to be treated as a legitimate son of his father to inherit the personal property of father. As a dependent also he has every right to seek compassionate appointment.

11. Having regard to the settled law with regard to the status of the son born through the second wife, this Court is unable to sustain the impugned order by which the petitioner's right to seek compassionate appointment was denied. As it has been held in several precedents, the petitioner is entitled to seek compassionate ground as a rightful heir and dependent of the petitioner's father. It is to be noted that the children born through the second marriage shall be considered as legitimate children, by virtue of Section 16 of the Hindu Marriage Act. The Division Bench of this Court, cited earlier has recognized the right of illegitimate children to seek compassionate appointment as a dependent of the deceased Government employee. In such circumstances, this Court has no hesitation to hold that the impugned order is contrary to the law settled with regard to the status of the petitioner.

12. The learned Government Advocate appearing for the first respondent submitted that the petitioner has not produced any record. This was never an issue, when the petitioner was given appointment on compassionate ground. The learned Government Advocate relied upon the letter, which was also referred to in the impugned



order. The letter of Government dated 16.04.2002, reads as follows:

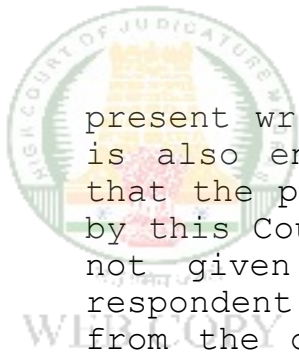
"It has now been brought to the notice of the Government for clarification by various Departments to whether children of the deceased Government Servants born through unlawful second marriage/wife are eligible for compassionate ground appointment. The matter has been examined in detail. It is considered that children born out of void marriage are entitled for the benefit in respect of the property of the deceased Government Servant ie., family pension and Death-cum-Retirement, Gratuity and that Compassionate appointment cannot be equated to the status of the property of the deceased. As such, the word 'son or unmarried daughter' as used in the scheme of compassionate appointment has to be construed only to mean son or daughter born through lawful wedlock."

13.The interpretation is that the children born out of void marriage may be entitled to inherit the property of the deceased Government Servant but claim for Compassionate appointment cannot be equated to the property of the deceased. When the petitioner's claim as a dependent of the deceased is established, there is no impediment for the respondents to consider the eligibility of the petitioner to get or seek appointment on compassionate ground. The Government letter appears to be misconceived having regard to the object behind appointment on compassionate ground. The view expressed in the Government letter is contrary to the well settled principles. The Government letter does not reflect any policy decision of Government. But an attempt to distinguish the right to inherit property so as to say getting compassionate appointment as a legal heir is different. This executive order has no support from any order of the Government. It is now brought to the notice of this Court that the Government has issued G.O.Ms.No.18 Labour and Employment (Q1) Department, dated 23.01.2020. The said G.O., specifically refers to the legal heirs, who are eligible for getting compassionate appointment. There is no specific reference to legal heirs through second or void marriage. In other words, from the reading of the said G.O., this Court is unable to disqualify the petitioner for giving appointment on compassionate ground. Therefore, this Court is unable to accept the argument of the learned Government Advocate referring to the Government letter which is contrary to the principles followed in several precedents.

14.As a matter of fact, the petitioner has not suppressed any fact before the authorities, when he sought for appointment on compassionate appointment. When the factum of marriage was never an issue earlier, it is not open to the respondents to raise an issue with regard to proof of marriage.

15.For all the above reasons, the order impugned in the

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present writ petition is quashed. Consequently, the writ petitioner is also entitled to regularization as prayed for. It is admitted that the petitioner is in employment, pursuant to the order granted by this Court and he is continuing in service. Hence, this Court has not given any direction for reinstatement. However, the first respondent is directed to regularize the service of the petitioner from the date of his original appointment with all attendant and monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// 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 Director of College Education,
Chennai.6

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-31068[F] dated
04/10/2021)

W.P. (MD) .No.13320 of 2014
and
M.P (MD) No.2 of 2014
and
W.M.p (MD) No.8625 of 2016
30.09.2021

_RD/JGB(01.11.2021) 9P 3C