



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2021

CORAM :

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THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.20919 of 2021

E.Murugadhas

...Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Commissioner of Town Panchayat,
Commissionerate of Municipal Administration,
MRC Nagar,
Raja Annamalai Puram,
Chennai - 600 028.

3.The Assistant Director of Town Panchayat,
Nagercoil Zone,
Collectorate complex,
Nagercoil.

4.The Executive Officer,
Manavalakurichi Town Panchayat,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent I.e. District Collector, Kanniyakumari, Nagercoil to pass appropriate of orders, on the petitioner's representation dated 02.10.2021, based on G.O.Ms.No.1499 Labour and Employment (Q1) Department, dated 03.08.1989 and several orders of this Court, within a specified time frame.

For Petitioner

:Mr.S.Visvalingam,

For R1 to R3

:Mr.G.V.Vairam Santhosh

Additional Government Pleader

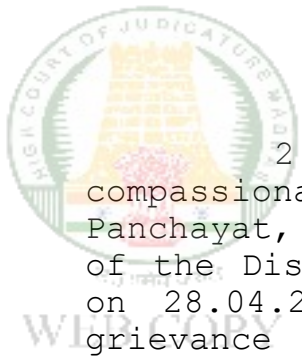
For R4

:Mr.J.Ashok

Additional Government Pleader

O R D E R

This writ petition is seeking for a Mandamus, directing the first respondent/the District Collector, Kanyakumari District, Nagercoil to take a decision on the petitioner's representation dated 02.10.2021, based on G.O.Ms.No.1499 Labour and Employment (Q1) Department, dated 03.08.1989.



2. The case of the petitioner is that he was appointed on compassionate ground as Record Clerk in Manavalakurichi Town Panchayat, as per reference No.R.C.No.1226/2007B3 dated 21.04.2008 of the District Collector, Kanyakumari @ Nagercoil and joined duty on 28.04.2008 and continuing in the same post till today. The grievance of the petitioner is that even at the time of his appointment on compassionate ground, his academic qualification is pass in +2 examination and Diploma in Robotics Engineering. Though, there were vacancies in the cadre of Junior Assistant, at the time of his appointment, without considering his qualification and instructions of the Government, he was appointed as Record Clerk. In this regard, he has given so many representations to the authorities concerned for posting him as Junior Assistant by considering his qualification. In the grievance day held on 18.10.2012, the District Collector, Kanyakumari @ Nagercoil has taken a decision to appoint him as Junior Assistant. But till date, no order has been passed regarding his re-designation as Junior Assistant. As per G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989, the persons having requisite qualification for the post of Junior Assistant should not be posted in the lower cadre on compassionate ground appointment. This has been dealt with in W.P(M) D No.69 of 2010 and W.P(MD) No.1685 of 2010, dated 22.04.2010 and 06.08.2010 and confirmed in W.A(MD) No.641 of 2010 and W.A.(MD) No.908 of 2010, dated 21.02.2011. This was discussed in detail and similar orders were passed in W.P(MD) No.13354 & 13355 of 2013, dated 06.12.2018. The petitioner once again made a representation to the respondent, and since the same was not considered by the respondent. Hence, the petitioner is before this Court, with the present writ petition.

3.The learned Additional Government Pleader appearing for the respondents submits that this petitioner has already filed a writ petition before this Court in W.P(MD) No.5006 of 2014, for a similar relief of Mandamus, directing the respondents to appoint the petitioner in the post of Junior Assistant in any of the Town Panchayat and the said writ petition was dismissed by this Court, by order dated 04.07.2019 in the following terms.

"5.The scheme of compassionate appointment itself is a concession. The claim of compassionate appointment, being a special scheme, is already held as violation of Articles 14 and 16 of the Constitution of India. Recruitment Rules were not followed, rule of reservation was not followed, merit assessment was not made. Simple on the ground of death of an employee, the benefit of compassionate appointment was given. What would be the efficiency level in public administration, if such appointments are provided in large scale. In the event of extending the scope of such special schemes unconstitutionally, we are losing the spirit



of constitutional philosophy and ethos. Thus, the claim for compassionate appointment is to be restrained to the extent possible, so as to provide appointment only to genuine cases, where the family was in distress and in need of emergent help on account of the sudden death of an employee. This being the purpose and objet of the scheme of compassionate appointment."

4. The learned Additional Government Pleader appearing for the respondents has also relied upon the Judgment of the Division Bench of this Court in W.A.No.1767 of 2019, dated 10.06.2019, wherein, similar such relief has been rejected by this Court.

5. In view of the earlier orders passed by this Court as stated supra, this Court is not inclined to entertain this writ petition. Accordingly, this Writ Petition is dismissed. It is made clear that it is always open to the petitioner to challenge the earlier order passed by this Court in W.P(MD) No.5006 of 2014, dated 04.07.2019. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

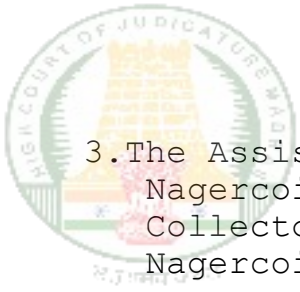
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Note:

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,
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4.The Executive Officer,
Manavalakurichi Town Panchayat,
Kanyakumari District.

+1 CC to M/s.S. VISVALINGAM, Advocate(SR-35761[F] dated
24/11/2021)

+1 CC to M/s.SPL GP (SR-35869[F] dated 25/11/2021)

W.P (MD) No.20919 of 2021
24.11.2021

MGJ(15.12.2021) 4P 7C