



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.12.2021
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P. (MD)No.2243 of 2017

and
W.M.P. (MD)No.1858 & 9005 of 2017

R.Inbaraja

... Petitioner

vs

1.The Secretary to Government,
Department of Most Backward and Denotified Communities Welfare,
Secretariat,
Saint George fort,
Chennai.

2.The Commissioner,
Most Backward and Denotified Communities Welfare Department,
Ezhilagam,
Chennai - 600 005.

3.The Joint Director,
Kallar Reclamation,
Madurai,
Madurai District - 625020.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the third respondent herein in his proceedings in Na.Ka.No.H.7/27212/2013 dated 19.01.2017 and to quash the same and further direct the third respondent to issue regularization order to the petitioner.

For Petitioner : Mr.G.Chandrasekar

For Respondents : Mr.D.Farjana Ghouslia
Spl. Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings in Na.Ka.No.H.7/27212/2013, dated 19.01.2017 and and further to direct the third respondent to issue regularization order to the petitioner.



2. The case of the petitioner is that his father died on 01.06.1992, while he was in service. At the time, the petitioner was minor and the petitioner's mother had submitted an application on behalf of the petitioner's sister on 23.12.1992. Thereafter, the petitioner's mother approached the respondents with the petition, dated 30.07.1997 and prayed to grant appointment to the petitioner and not to the petitioner's sister, since she is getting married. After processing the application, the petitioner was granted appointment order, dated 11.04.2012, thereafter, the petitioner was serving in the appointed post. The petitioner submitted a representation to regularize the service as per the G.O.Ms.No.80, Labour and Employment Department, dated 02.03.2016. In the said Government Order, it has been stated that persons who are appointed under compassionate grounds until 01.02.2016 shall be regularized. The third respondent issued show cause notice, dated 19.01.2017, directing the petitioner to submit explanation why the service of the petitioner shall not be terminated, since his appointment is found to be mistake. The reason stated in the show cause notice is the petitioner's mother has given the application for the appointment to the petitioner's sister and on change of circumstance, the petitioner's mother submitted that the second application to grant appointment to the petitioner. Challenging the said show cause notice the present writ petition is filed.

3. This Court, while hearing the case for admission, has granted an interim stay, vide order, dated 10.02.2017. Thereby, the impugned show cause was under stay until now. The respondents have preferred a vacate stay petition in W.M.P. (MD) No. 4768 of 2017. In the meanwhile, the respondents have filed another miscellaneous petition is W.M.P. (MD)No.9005 of 2017 to delete the first respondent, the Secretary to Government Department of Most Backward and Denotified Communication welfare.

4. Heard Mr.G.Chandrasekar, learned Counsel appearing for the petitioner and Mrs.D.Farjana Ghousia, learned Special Government Pleader appearing for the respondents.

5. The respondents have filed counter stating that the writ petition is misconceived. The writ petition is filed challenging the show cause notice only. The petitioner ought to submit an explanation before the authorities and this Court on several occasion has dismissed the writ petitions, if show cause notice is challenged. The petitioner submitted that even though this is a show cause notice, the respondents have predetermined the entire issue and if any explanation is submitted before the authorities, the petitioner fears that he would be terminated from service.



6. The petitioner also submitted that the impugned show cause notice states that the alternative application shall not be submitted before the authorities, seeking compassionate appointment. The respondents stated that the rules and regulations are not providing an opportunity to submit alternative application. As rightly pointed out by the learned Counsel appearing for the petitioner that the impugned show cause notice is not stating and referring to any rules and regulations. Therefore, this Court is of the considered opinion that the Government orders granting compassionate appointment only states that the legal heirs of the deceased are entitled to. It may be the spouse of the deceased, or the son or daughter of the deceased. In the present case, the mother of the petitioner has submitted the application on 23.12.1992, which is within three years period and the respondents have not granted any appointment from the year 1992-1997.

7. In the meanwhile, there is change in the circumstances in the family and the mother has decided to get compassionate appointment for the son and has approached the respondents to grant appointment to the son, vide petition No.37/1997. The respondent has taken that the period of three years is over, taking into consideration, the subsequent representation dated 30.07.1997. Therefore, this Court is of the considered opinion that the compassionate appointment original application is within time and subsequently, it is only to substitute the name and there is no deviation from the original application. Therefore, the second respondent ought to have considered only the substitution of name and it cannot be considered as an original application, seeking compassionate appointment. The petitioner also relied on G.O.Ms.No.80, Labour and Employment Department, dated 02.03.2016, where the State Government has issued Government Order stating that all the compassionate appointment on or before 01.06.2016 shall be regularized.

8. Therefore, this Court is of the considered view that the respondents are incorrect in stating that the petitioner has submitted application belatedly. The respondents are incorrect in stating that the petitioner mother has submitted two applications earlier for daughter and then for son, the petitioner's mother has submitted only one application for daughter and then changed the name in the said application and this act is not warranting "termination of service". This Court is of the considered opinion that even though, it is a show cause notice, the show cause notice is misconceived and moreover, the petitioner is in service from 11.04.2012 to 19.01.2017 and still continuing in the service based on the interim order until today. Now the petitioner has put in service for more than nine years. At this stage, the petitioner cannot be terminated from service. Hence the impugned show cause notice is set aside and the respondents are directed to regularize



the petitioner's service from the date of original appointment in the light of G.O.MS.80, Labour and Employment Department, dated 02.03.2016.

9. Hence, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

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 Secretary to Government,
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Secretariat, Saint George fort, Chennai.
- 2.The Commissioner,
Most Backward and Denotified Communities Welfare Department,
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- 3.The Joint Director,
Kallar Reclamation,
Madurai, Madurai District - 625020.

+1 CC to M/s.SPL GP (SR-39963[F] dated 22/12/2021)

+1 CC to M/s.G.CHANDRASEKAR, Advocate (SR-39771[F] dated 21/12/2021)

Order made in

W.P. (MD)No.2243 of 2017

and

W.M.P. (MD)No.1858 & 9005 of 2017

21.12.2021

tp(CO)

TR(09.02.2022) 4P 6C