



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM :

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THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS. JUSTICE N.MALA

Writ Appeal No.496 of 2022

1. The State of Tamil Nadu,
represented by the Secretary to Government,
Department of Commercial Taxes
and Registration,
Fort St. George,
Chennai.
 2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai 600 028.
 3. The District Registrar (Administration),
Ariyalur Registration District,
Ariyalur.
- ...Appellants/Respondents
- vs.
- V.Muthamilselvan ...Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 06.09.2021 passed by this Court in
W.P.No.18651 of 2021.

Prayer in W.P. No. 18651/2021:

Writ Petition filed under Article 226 of the Constitution
of India to issue a Writ of Mandamus, directing the respondents
to appoint the petitioner as Junior Assistant with effect from
31.10.2017 with all consequential service, monetary benefits and
backwages.

For Appellants : Mr.R.Neelakandan,
Addl. Advocate General,
assisted by
Mr.Stalin Abhimanyu,
Addl. Government Pleader
and Mr.P.Sathish,
Additional Government Pleader



For Respondent :Mr.T.Saikrishnan

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

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This Writ Appeal is directed against the order dated 06.09.2021 passed by the learned Single Judge in allowing the Writ Petition in W.P.No.18651 of 2021, whereby, the Respondents therein were directed to give effect to G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989 from the date of the Writ Petitioner's initial appointment on 31.10.2017.

2. It is seen that, the Respondent/Writ Petitioner was appointed as an Office Assistant on 31.10.2017 with the 3rd Respondent herein on compassionate ground, after his father's demise on 08.10.2007. Before the learned Single Judge, it was the case of the Writ Petitioner that, on the date of his appointment as an Office Assistant, he possessed higher qualification, i.e. M.Com., M.L. and that, he need to be appointed in Group C post, as two other similarly placed candidates have been appointed on compassionate ground in Group C post.

3. Before the learned Single Judge, it was pointed out by the learned counsel for the Writ Petitioner that, the said issue has been addressed by the Government of Tamil Nadu in G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989, wherein, the Government has been enjoined to accommodate persons appointed on compassionate ground depending upon the vacancy and qualification.

4. The Apex Court in a number of cases, has considered grant of employment on compassionate ground. In a recent decision in the case of M.Kendra Devi vs. The Government of Tamil Nadu in Civil Appeal Nos.1918-1919 of 2022, the Apex Court, vide judgment dated 10.03.2022, has held as under:

"46. After taking note of the rival submissions and the view which we have expressed, although we deprecate the practice of State Government in making such compassionate appointments under Group 'B' post after the judgment of this Court in Nagpal's case (supra), still this Court refrain to disturb the seniority list which has been assigned to the respective compassionate appointees, vis-a-vis, direct



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recruits Assistant Engineers to whom consequential seniority has been assigned undisputedly under Rule 35(aa) of Rules, 1955 which may not call for our interference, at this belated stage, after each of them is in service for more than two decades and indeed right is being conferred to each of them and an individual although a beneficiary was not at fault at any given point of time either at the time of entry into service or thereafter."

5. In yet another decision in the case of the Secretary to Government, Department of Co-operation, Food and Consumer Protection vs. A.Kingston David (Civil Appeal Nos.7655-7656 of 2021, dated 11.12.2021), the Apex Court has considered the very same Government Order in G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989, and set aside the order of this Court by holding that, the candidate cannot seek for appointment as Junior Assistant from the date of initial appointment, even though, he was appointed as Record Clerk. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"12. In this backdrop, the respondent took a conscious decision to avail of a public appointment on a compassionate basis by opting to secure an appointment to the post of Record Clerk. Having accepted the appointment, it was not open to the Respondent to challenge his appointment and to seek appointment as a Junior Assistant from the initial date of appointment. The Division Bench has ordered, in effect that though the Respondent was appointed as a Record Clerk and served in that capacity, the appointment should nonetheless be treated as an appointment made to the post of a Junior Assistant from the initial date of appointment as a Record Clerk though without any consequential monetary benefits. The appellants have been directed to give promotion from the cadre of Junior Assistant on that basis. Such a course of action is unknown to service jurisprudence. As a result of this direction, others who are similarly circumstanced, those who waited for a vacancy in the Junior Assistant's post and



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those who opted another lower post, would be seriously affected by allowing the respondent to claim an undeserved benefit of this nature.

13. For the above reason, we are of the view that the judgment of the Division Bench of the High Court and the ultimate direction is unsustainable. We accordingly allow the appeals and set aside the impugned judgment and order of the Division Bench of the High Court of Madras at its Madurai Bench, dated 8 December 2016. The Writ Petition file by the Respondent shall stand dismissed. However, we clarify that this will have no bearing on the promotion to which the Respondent may be entitled to be considered or which he may have been granted in the ordinary course, independent of the impugned direction of the High Court."

6. Compassionate appointment shall not be considered as a backdoor entry and it is based on rules, regulations, guidelines and Government Orders. However, it should be remembered that compassionate appointment is not an usual recruitment process and the candidates seeking such appointment will have to satisfy all the requirements contemplated under the Rules with regard to age, qualification, etc, but however, it is subject to relaxation depending upon the circumstances of each case.

7. In the case on hand, vide letter dated 03.07.2015, the Writ Petitioner has given his written consent to the District Collector, Ariyalur, to work as Office Assistant. That being the case, he cannot go back on his undertaking and take a stand now that, he may be considered for appointment as Junior Assistant.

8. Hence, we are of the view that, the order of the learned Single Judge in directing the Respondents to give effect to G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989 to the case of the Writ Petitioner from the date of his initial appointment, cannot be sustained in the light of the judgment of the Apex Court in the case of A.Kingston David (supra). In the said judgment, it has been held that, a higher post cannot be claimed as a matter of right. Accordingly, the order dated 06.09.2021 passed by the learned Single Judge in W.P.No.18651 of 2021 is set aside.



9. However, it is made clear that, if the Writ Petitioner possesses higher educational qualification, the same has to be considered for promotion to a higher post and that, disposal of this Writ Appeal will not have any bearing on the promotion to which the Respondent/Writ Petitioner may be entitled to be considered.

The Writ Appeal is allowed with the above direction and observation. No costs. Consequently, connected C.M.P.No.3584 of 2022 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

(aeb)

To:

1. The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes
and Registration, Fort St. George,
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2. The Inspector General of Registration,
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3. The District Registrar (Administration),
Ariyalur Registration District,
Ariyalur.
4. The District Collector
Ariyalur

+1 CC to Mr.T.Saikrishnan, Advocate sr 24634.
+1 CC to The Government Pleader sr 24556.

W.A.No.496 of 2022

SSN(CO)
SP(13/05/2022)