



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.04.2022**

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WEB COPY

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

**W.P. (MD) Nos. 6227 of 2022
and
W.M.P. (MD) No. 4837 of 2022**

P. Shanmugavalli

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai.
 2. The Assistant Director of Town Panchayats,
District Collector's Office,
Sivagangai,
Sivagangai District.
 3. The District Collector,
District Collector Office,
Sivagangai,
Sivagangai District.
 4. The Secretary,
Tamil Nadu Public Service Commission,
Omanthoorar Government Estate,
Anna Salai,
Chennai - 600 002.
 5. The Commissioner,
Manamadurai Municipality,
Manamadurai,
Sivagangai District.
 6. The Joint Director (General),
Directorate of Town Panchayats,
Chennai - 600 028.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus



calling for the records relating to the sixth respondent proceedings made in Na.Ka.No.2024/2022/A3, dated 26.02.2022, quash the same, directing the fifth and sixth respondents herein to consider the petitioner's case for appointment to the post of Junior Assistant on compassionate ground in accordance with the guidelines issued in G.O.Ms.No.206, Municipal Administration and Water Supply (Town Panchayats Department) dated 02.11.1995, after getting necessary concurrence from the fourth respondent herein with all consequential benefits.

For Petitioner : Mr.R.Sundar

For Respondent : Mr.D.Sadiq Raja
Addl. Govt. Pleader for R1-R3&R6
Mr.J.Anand Kumar
Standing counsel for R4

O R D E R

The order of rejection rejecting the claim of the writ petitioner to appoint her to the post of Junior Assistant on compassionate ground is under challenge in the present Writ Petition.

2. The petitioner was appointed as Record Clerk on compassionate ground due to the death of her father, while in service.

3. The grievances of the writ petitioner is that she has completed Under Graduation and therefore, she is fully qualified for the appointment to the post of Junior Assistant and Assistant. Thus, she must be appointed as Junior Assistant or Assistant on compassionate ground. The said request of the writ petitioner was rejected. Thus, the present Writ Petition has been filed.

4. The claim of compassionate appointment on second occasion itself is impermissible under the scheme of compassionate appointment. Once the person is appointed on compassionate ground in a particular post, thereafter the same person cannot submit an application seeking higher post on compassionate ground. In other words, the compassionate appointment scheme cannot be applied twice in respect of the same candidate.

5. The very purpose and object of the compassionate appointment is to mitigate the circumstances arising on account of the sudden death of the Government employee. The compassionate appointment is not an absolute right, it is a concession, more so, which is the violative of Articles 14 and 16 of the Constitution of India. The scheme being a concession, cannot be extended for the purpose of securing higher post by submitting further application on compassionate ground. In the present case, the petitioner was



already appointed to the post of Record Clerk on compassionate ground.

6. Equal opportunity in public employment is the constitutional mandate. All public appointments are to be made under the constitutional scheme, by following the open competitive process and by affording an opportunity to all eligible candidates who are all longing to secure public employment on merits and by availing the benefit of reservation. However, in this case, no merit assessment has been made, no selection process is conducted, and no suitability and eligibility are verified. That is the reason why the Courts have held that the compassionate appointment is not an absolute right. In the event of appointing large number of candidates under compassionate appointment, undoubtedly, the efficiency in the public administration will be in trouble and the constitutional mandate of efficient public administration is diluted. In all circumstances, the public appointments are to be made on merits and by following the rules of reservation. Therefore, the compassionate appointment being the special scheme formulated, cannot be an absolute right and the compassionate appointment is to be granted only to meet out the emergency circumstances of the family of the deceased Government employee. While being so, a person seeking appointment on compassionate ground may be ambitious in getting higher post. It is always open to them to secure public employment to higher post only through open competitive process. To mitigate the penurious circumstances aroused on account of the death of the deceased employee, compassionate appointments are granted only to the Group-IV post. If at all the petitioner is unable to continue in Group-IV services, she has to participate through the open competitive process. Rather than, she cannot submit second application for appointing her in the higher post on compassionate ground which is impermissible. It will lead to discrimination and denial of opportunity to other eligible persons who are all waiting for compassionate appointment.

7. The learned counsel for the petitioner made a submission that the request of the other similarly placed persons was considered by the Authorities and some of the persons were appointed as Junior Assistant. By citing few such cases, the Authorities cannot consider the grant of appointment to higher post on compassionate ground, which will lead to disastrous consequences and result in unconstitutionality. No doubt, in certain cases, the Authorities would have provided appointment to the post of Junior Assistant. However, those instances cannot be cited as precedent for the purpose of providing appointment to the post of Junior Assistant. Even the selection would not confer any right for appointment. Only an order of appointment will confer a right to the candidates and even after selection, the selection may be cancelled by the Competent Authorities.



8. This being the scope of the right conferred under the special scheme, the very claim of the writ petitioner that she should be appointed as Junior Assistant, in view of the fact that she possessed the requisite qualification is untenable and cannot be considered by the Authorities. The same has been rightly rejected by the Authorities.

9. The scope of the scheme of compassionate appointment has been considered by the Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh and others Vs. Premalatha** reported in **2022 (1) SCC 30**. The Hon'ble Supreme Court again emphasized that "equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution of India. However, the appointment on compassionate ground offered to a dependent of the deceased employee is an exemption to the said norms. The compassionate ground is a concession and not a right". However, the appointment on compassionate ground can never be claimed as a matter of right.

10. In view of the facts and circumstances, this Court is of the considered opinion that the petitioner was already appointed to the post of Record Clerk on compassionate ground and she is working. If at all she wants to secure higher post, she has to participate in the open competitive process and her second application for compassionate appointment to provide a higher post is, undoubtedly, unsustainable. Thus, there is no infirmity as such in respect of the impugned order of rejection.

11. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

vji

To

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Municipal Administration and Water Supply Department,
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6. The Joint Director (General),
Directorate of Town Panchayats,
Chennai - 600 028.

+1 CC to M/s.J. ANANDKUMAR, Advocate (SR-16755[F] dated
06/04/2022)

+1 CC to M/s.R. SUNDAR, Advocate (SR-16877[F] dated 06/04/2022)

+1 CC to M/s.SPL.GP (SR-17013[F] dated 06/04/2022)

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MGJ(28.04.2022) 5P 10C