BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 23195 of 2021

M.Priyan ... Petitioner

Vs.

1. The Agriculture Production Commissioner and
Principal Secretary to Government,
Agriculture Department,
Fort St.George,
Chennai - 600 009.

2. The Director of Agriculture,
Agriculture Department,
Chepauk, Chennai - 600 005.

3. The Registrar of Agro Engineering Services,
Office of the Director of Agriculture,
Chepauk,
Chennai - 600 005. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to provide any suitable appointment to the petitioner under the compassionate ground on the basis of the Letter No.12383/Ve.Po.2/2021-1 dated 09.08.2021 issued by the first respondent to the second respondent based on the petitioner's representation dated 30.06.2021.

For Petitioner : Mr.A.Rajaram

For Respondents: Mr.D.Sadiq Raja
Additional Government Pleader

O R D E R

The relief sought for in the present Writ Petition is to direct the respondents to provide any suitable appointment to the writ petitioner on compassionate ground.

2. The mother of the writ petitioner one Lalithambiga was working as Steno Typist in AGROFED and died on 21.08.2017, while she was in service. Thereafter, the father of the petitioner submitted a representation on 25.10.2017 seeking appointment on compassionate ground in favour of the petitioner.

3. The learned counsel for the petitioner states that the application was processed and the enquiry was conducted by the Tahsildar, Kalkulam who in turn issued combined certificate on 12.08.2020. The combined certificate was communicated to the respondents and the Agricultural Department also passed an order on 09.08.2021 stating that the Authorities must take appropriate action on the application submitted by the writ petitioner for compassionate appointment.

4. The learned Additional Government Pleader brought to the notice of this Court that as per the combined certificate issued by the Tahsildar dated 12.08.2020, the annual income of the family of the deceased employee is Rs.3,48,660/-. Therefore, the petitioner is not eligible to avail the scheme of compassionate appointment. The ceiling fixed under the scheme of compassionate appointment is Rs.2,00,000/- and the income over and above Rs.2,00,000/- cannot be considered for the purpose of providing appointment.

5. In the present case, the petitioner's family is having source of income. Even as per the combined certificate issued by the Tahsildar, the source of income of the petitioner's family is more than the prescribed limit under the scheme of compassionate appointment. Thus, the petitioner has not established any acceptable ground for the purpose of considering the relief and even as per the combined certificate produced by the Tahsildar, the annual income of the family is Rs.3,48,660/-, which is not falling under the ceiling fixed under the scheme of compassionate appointment.

6. To assess the source of income of the family, the actual sources and factors are to be taken into consideration. The scheme of compassionate appointment contemplates the ceiling of Rs.2,00,000/- and if the income of the family exceeds Rs.2,00,000/-, then the family is not eligible to avail the scheme of compassionate appointment. Therefore, to consider the source of income, the family pension and other benefits granted to the employees are also to be considered, in view of the fact that if the family pension exceeds Rs.2,00,000/-, then those persons may not be eligible as the ceiling fixed is Rs.2,00,000/- for consideration.

7. There are numerous circumstances, where the pensioners and family pensioners are the income tax assesses and their over all income is exceeding the income tax slab fixed by the Income Tax Department. If the compassionate appointment is provided to such families, then the very purpose and object of the scheme is defeated. Therefore, these aspects are to be clarified by the Government. The family pension and the source of income are to be

taken into consideration for drawing the eligibility, based on the ceiling fixed by the Government in the scheme as Rs.2,00,000/-.

8. The Hon'ble Supreme Court of India in the case of ***Union of India and others Vs. Amrita Sinha*** made an observation as follows:

> *"The monthly pension which was payable to the respondent was required to be taken into account in the award of merit points. The Tribunal, however, came to the conclusion that pension is paid for past service rendered by the employee and, hence, denial of compassionate appointment on that basis was not justifiable. This reasoning of the Tribunal is fallacious. Undoubtedly, pension is not an act of bounty, but is towards the service which has been rendered by an employee. However, in evaluating a claim for compassionate appointment, it is open to the authorities to evaluate the financial position of the family upon the death while in service. Compassionate appointment is not a vested right. It is provided in order to enable a family to tide over a financial crisis caused by the death of its wage-earner while in service. If the scheme requires that the family pension must be taken into account in evaluating the merits an application, it has to be followed."*

9. Therefore, the Hon'ble Supreme Court has considered that the pension or family pension cannot be excluded from the source of income. If the pension is excluded and the family pension is not excluded, then also it amounts to discrimination in respect of source of income considered. The income under the General Act like Income Tax Act etc., is to be considered. Once the income includes all source of income, there cannot be any exclusion of income including pension or family pension. In the event of excluding the family pension, it will result in discrimination and as such, income is also to be considered as source of income to the family. The exclusion is meaningless, as the family pension is also an income. Therefore, the scheme is to be restricted only to the deserving family. In the present case, the petitioner's family has crossed the income ceiling of Rs.2,00,000/- as contemplated under the scheme of compassionate appointment.

10. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Agriculture Production Commissioner and
 Principal Secretary to Government,
 Agriculture Department,
 Fort St.George, Chennai - 600 009.

2. The Director of Agriculture,
 Agriculture Department,
 Chepauk, Chennai - 600 005.

3. The Registrar of Agro Engineering Services,
 Office of the Director of Agriculture,
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+1 CC to M/s.A.RAJARAM, Advocate (SR-10817[F] dated 09/03/2022)

+1 CC to M/s.SPL GP (SR-11141[F] dated 10/03/2022)

ORDER MADE IN
W.P. (MD) No. 23195 of 2021
09.03.2022

PKP/05.04.2022/4P/6C