



W.P.No.1563 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 22.08.2023

ORDERS PRONOUNCED ON : 19.09.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

W.P.No.1563 of 2020

V.Priyadharsan

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep., by its Secretary to Government,
Public Health Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Director,
Public Health and Provocative Medicine,
D.M.S.Campus,
Chennai.

3.The Deputy Director,
Public Health Services,
Thiruvavur.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India,
praying for issuance of Writ of Certiorarified Mandamus to call for the



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records on the file of the 3rd respondent in connection with his proceedings in Na.Ka.No.4504/A2/2019 dated 24.12.2019 and quash the same and consequently direct the respondents to reconsider the petitioner's request for appointment on compassionate ground without reference to his father's status.

For Petitioner : Ms.T.Aananthi

For Respondents : Ms.P.Vijayadevi
Government Advocate

ORDER

Heard Ms.T.Aananthi, learned counsel for the petitioner, and Ms.P.Vijayadevi, learned Government Advocate for the respondents and perused the material available on record.

2. The petitioner is the only son of his mother Late G.Usha Rani, who worked as Auxiliary Nursing Midwife in Government Primary Health Centre, Kottarakudi, who died in harness on 14.05.2012. On the date of death of his mother, the petitioner was only 14 years of old. The father of the petitioner was working as Driver. But he is unable to



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support the petitioner, since he has another wife and separate family. At the time of death of his mother, he was studying only 9th Standard and after his mother's death, he was put in dark distress, as he depended on his mother emotionally and financially. After completion of +1, he applied for appointment on compassionate grounds on 06.04.2015. The petitioner submitted a representation dated 14.10.2019 as a reminder by enclosing all relevant documents to all the respondents. But the respondents failed to consider the claim of the petitioner. Against the action of the respondents in not considering the petitioner's claim for terminal benefits, family pension and compassionate appointment, he filed a writ petition in W.P.No.31203 of 2019. The said writ petition was disposed of by order dated 06.11.2019 to consider the representations dated 06.04.2015 and 14.10.2019 of the petitioner. In pursuance to the same, the 3rd respondent issued the impugned letter dated 24.12.2019 stating that the request of the petitioner is rejected on the ground that the father of the petitioner is working as Driver in Government. Aggrieved by the same, the present writ petition is filed.



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3. No counter affidavit has been filed on behalf of the respondents.

4. Learned counsel for the petitioner submits that the mother of the petitioner is the second wife of his father and as such, he could not get support from his father. By treating the marriage between his mother and father as illegal, his father's position by any means shall not be a hindrance to get the benefits out of the death of his mother, who rendered 24 years of unblemished service to consider the claim of the petitioner.

5. Learned counsel further submits that as the petitioner's father is having separate family, he is not taking care of the petitioner. As such, the petitioner was solely depended on his mother and after her demise, he was left in indigent circumstances and he was suddenly left in lurch with no source of livelihood. The learned counsel would submit that though the petitioner's father is also a legal heir, he has given a letter of “No Objection” to grant all terminal benefits, pension and for giving appointment on compassionate grounds to the petitioner, the said letter of “No Objection Certificate” was submitted to the respondents on 14.10.2019. But the 3rd respondent rejected the request of the petitioner



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by the impugned letter dated 24.12.2019 without considering all these facts.

6. Learned counsel for the petitioner has placed reliance on the orders of the Hon'ble Apex Court and this Court as noted hereinunder:

- i. ***Syed Khadim Hussain v. State of Bihar and others*** reported in ***(2006) 9 SCC 195;***
- ii. ***Sundarapandiyan v. The State of Tamil Nadu and another*** ***[W.P.(MD) No.7063 of 2014, dated 02.12.2016];***
- iii. ***E.Suganthi Shamala v. Chief Engineer (General), Highways Department and others*** ***[W.P.No.14977 of 2012, dated 10.04.2014];***
- iv. ***P.Karthik v. Government of Tamil Nadu and others*** ***[W.P.No.33252 of 2015, dated 15.10.2015];***
- v. ***S.Velraj v. The Superintendent Engineer and another*** ***[W.A.(MD) No.1400 of 2011, dated 16.12.2015];***
- vi. ***K.Alexander v. The Government of Tamil Nadu and others*** ***[W.P.No.11824 of 2012, dated 16.11.2016]; and***



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vii. *C.Muthulakshmi and another v. The District Collector and others [W.P.No.30563 of 2016, dated 19.07.2021].*

7. On careful consideration of the above judgments/orders, in the considered opinion of this Court, all these judgments/orders are relating to the issue of submission of applications by minor legal heirs of the deceased employee, whose claims were rejected by the Government authorities and the Courts passed orders in favour of the petitioners therein to consider their cases for appointment.

8. As in the present case, the reason for rejection is different, these judgments/orders need not be considered in the present case, though this Court is fully accepting the proposition of law laid down in the judgments/orders cited supra.

9. On the other hand, learned Government Advocate for the respondents would submit that there is no illegality in the order of the 3rd respondent in rejecting the claim of the petitioner for compassionate



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appointment, as the petitioner's father was working as Driver in Government.

10. Having heard the submissions of the respective counsels and upon perusal of the material available on record, it is an admitted fact that the petitioner's mother, who was working as Auxiliary Nurse Midwife in Government Primary Health Centre died in harness on 14.05.2012. It is also an admitted fact that the petitioner's father was working as Driver in Government. It is also an admitted fact that the petitioner's mother is the second wife of his father. It appears that the father of the petitioner, without terminating his marriage with his first wife, married the mother of the petitioner. In view of the same, admittedly, there is separate family to the father of the petitioner.

11. The contention of the learned counsel for the petitioner that the father of the petitioner is not supporting the petitioner, as he has another wife and separate family, has to be accepted.



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12. The State of Government of Tamil Nadu in exercise of the powers conferred by the proviso to Article 309 of the Constitution, made the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023. 'Family' is defined in the said Rules at Rule 2(f) and Rule 2(f)(i) is extracted hereinunder:

*“2(f) **“family”** means, –*

(i) in the case of a deceased or medically invalidated married Government servant, his legally wedded spouse, son, daughter including adopted son or daughter, who were dependant on the Government servant at the time of his death or medical invalidation.”

13. On perusal of the definition of 'family' provided in the said Rules, it appears that only legally wedded spouse, son, daughter including adopted son or daughter, who were dependant on the Government Servants at the time of his/her death or medical invalidation are only eligible for compassionate appointment.

14. Admittedly, in the present case, the mother of the petitioner is



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not the legally wedded wife of the father of the petitioner. Under these circumstances, the unfortunate petitioner would not be eligible for compassionate appointment, even after the death of his father, who is also a Government employee, as the petitioner is not the son of the legally wedded wife of his father.

15. The contention of the petitioner that he is emotionally and financially depended on her mother, as his father is having separate family, cannot be brushed away in the absence of any rebuttal evidence on behalf of the respondents. However, as and when the father of the petitioner also issued No Objection Certificate to grant terminal benefits, pension and for appointment on compassionate grounds to the petitioner, for the death of the petitioner's mother, as he is the only legal heir of her, the reasons stated in the order impugned in the writ petition to reject the claim of the petitioner are irrational, illegal and unjust. The whole object of granting compassionate appointment is to enable the family to tied over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the hard situation.



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16. In the present case, after sudden death of his mother, the petitioner has no support to survive at the age of 14 years. However, by doing some coolie works, he studied up to +1 and submitted application on 06.04.2015 within the time permitted to submit application seeking compassionate appointment.

17. It is to be noted that the respondents failed to consider the fact that the father of the petitioner is having another wife and separate family and the petitioner is the son of the second wife of his father. Without considering all these factual aspects, the 3rd respondent issued the impugned letter rejecting the claim of the petitioner by order dated 24.12.2019, which is unjust and irrational. The respondents ought to have kept in mind that the scheme of compassionate ground appointment was introduced by the Government as a welfare measure to help the legal heirs of the deceased Government servants appreciating the services rendered by them for the Government.



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18. It is appropriate to extract the observation of the High Court of Andhra Pradesh in ***K.Udaykiran vs. State of Andhra Pradesh*** reported in ***2021 SCC OnLine AP 2009*** at Paragraph Nos.15 and 20 as hereinunder:

“15. The respondents have to understand the very purpose of providing compassionate appointment, which is meant for providing employment assistance to the dependants of the deceased employee, who died in harness and thereby to provide some relief to the family from undergoing financial sufferings. When the family of the deceased employee consisting of illiterate wife and minor child, since, they have no other source of livelihood after the untimely death of the bread winner of the family, the respondents should have been much more sympathetic and practical in considering the claim of the dependants of the deceased employee for compassionate appointment.

20. This Court expects from the respondents also such type of liberal approach in considering the claims of the dependants of the deceased employees for compassionate appointments. This court holds



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that the respondents shall consider the cases of the dependants of the employees died in harness with human touch without considering only technicalities.”

19. In this regard, it is worthwhile to refer the case in ***Balbir Kaur v. Steel Authority of India Limited*** reported in ***(2000) 6 SCC 493*** wherein their Lordships (U.C. Benarjee, J speaking for the Bench) of the Hon'ble Supreme Court have held as under:

“In the case of appointment considering the social and economic justice as enshrined in the constitution, denials of deserving cases are liable to be set aside. Further, the purpose of providing compassionate ground to a son or daughter or a near relative of the deceased government servant is to render assistance to the family, which is found in indigenous circumstances. Hence, in considering the case for compassionate appointment, the authorities are supposed to adopt a human outlook.”

20. The Hon'ble Apex Court further held at Para No. 19 as extracted hereinunder:



“The concept of social justice is the yardstick to the justice administration system or the legal justice and as Respondent pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”

21. In this regard, it is worthwhile to refer the case in ***Superintending Engineer v. V. Jaya*** reported in ***(2007) 6 Mad LJ 1011***, wherein their Lordships comprising a Division Bench of this Court have held at Para No. 7 as extracted hereinunder:

“7. However, in a case of request for appointment on compassionate ground, however, the Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot ignore the very purpose of providing employment on compassionate ground to the dependant of an



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employee/government servant dying in harness in preference to anybody else as it is done so in order to mitigate the hardship to the family of the employee on account of his unexpected death while still in service. The concept of compassionate employment is intended to alleviate the distress of the family and it is for such purpose appointments are permissible and provided even in the rules and regulations and any rigid approach or too technical objections may defeat the very object of the scheme. It is for that purpose while considering the request for compassionate appointment; the authorities are expected to act as a Good Samaritan overlooking the cobwebs of technicalities.”

22. Admittedly, in the present case, the respondents failed to consider the case of the petitioner in proper perspective. As such, the letter dated 24.12.2019 issued by the 3rd respondent, which is impugned in this writ petition, is unsustainable and accordingly, it is liable to be set aside.

23. For the above mentioned reasons, this Writ Petition is allowed



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with the following directions:

- i. The impugned letter dated 24.12.2019 of the 3rd respondent is hereby set aside;
- ii. The respondents are directed to release the terminal benefits for the death of the mother of the petitioner to the petitioner within a period of six weeks from the date of receipt of a copy of this order; and
- iii. The respondents are further directed to consider the claim of the petitioner for appointment on compassionate ground in any suitable post within a period of six weeks from the date of receipt of a copy of this order.

24. There shall be no order as to costs.

19.09.2023

Note: Issue order copy by 22.09.2023.



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NCC : Yes/No
Index : Yes/No
Internet : Yes

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BATTU DEVANAND, J.

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To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Public Health Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Director,
Public Health and Provocative Medicine,
D.M.S.Campus, Chennai.

Pre-delivery Order made in
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- 3.The Deputy Director,
Public Health Services,
Thiruvavur.



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Dated : 19.09.2023