



W.P.No.6042 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.6042 of 2020

S.Rajesh

.. Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Salem Region, Salem.

2.The Deputy Registrar of Co-operative Societies,
Omalur Circle,
Salem District.

3.KK.142, Pottaneri Primary Agricultural
Co-operative Credit Society Ltd.,
Rep., by its President,
Pottaneri Post, Mettur Taluk, Salem District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to appoint the petitioner as an employee of the 3rd society on compassionate ground under Rule 149 of the Tamilnadu Co-operative Societies Rules,



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1989 pursuant to the circular issued by the Registrar of Co-operative Societies, Chennai Circular No.3/2009 Na.Ka.8541/2008 SF3 dated 12.02.2009.

For Petitioner : Mr.M.S.Palaniswamy
For RR1 & 2 : Ms.P.Vijayadevi
Government Advocate
For R3 : Mr.L.S.Shanmugasundaram

ORDER

Heard Mr.M.S.Palaniswamy, learned counsel for the petitioner, Ms.P.Vijayadevi, learned Government Advocate for respondents 1 and 2 and Mr.L.S.Shanmugasundaram, learned counsel for the 3rd respondent.

2. The facts of the case are that the father of the petitioner, who was working as Night Watchman in the 3rd respondent-Society died on 21.08.2017 while in service. He left behind his mother, wife, son and daughter as his legal heirs. The petitioner is the son of the deceased employee and is the only educated member of the family. The sister of the petitioner already married and she gave 'No Objection Certificate' on 24.10.2017 to provide appointment to the petitioner on compassionate



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grounds. The petitioner has submitted a petition dated 10.10.2018 before the 2nd and 3rd respondents for appointment on compassionate grounds. In fact, the post of Watchman is vacant in the 3rd respondent-Society. The 3rd respondent-Society considering the petition dated 10.10.2018 of the petitioner, passed a resolution dated 18.02.2019 stating that as of now, there is no vacant post available in the society, but as per the circular of the Registrar of Co-operative Societies in Circular No.3/2009, Na.Ka.No.8541/2008 SF3, dated 12.02.2009, the Registrar has recommended the name of the petitioner to the 1st and 2nd respondents to appoint him in any suitable post in some other society. Even after passing resolution by the 3rd respondent recommending the claim of the petitioner, the 1st and 2nd respondents are not considering the claim of the petitioner. Aggrieved by the same, the present writ petition is filed.

3. The 1st and 2nd respondents have filed their counter affidavit stating that the father of the petitioner was engaged as Night Watchman on temporary basis at Rs.75/- per day on daily wages by the 3rd respondent as per the resolution dated 12.04.2000. The engagement of



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the petitioner's father was against to Rules 149(1) and 149(2) of the Tamil Nadu Co-operative Societies Rules, 1988 (hereinafter referred to as "the 1988 Rules"). Subsequently, the father of the petitioner was made permanent with effect from 01.04.2001 *vide* 18(1) settlement, dated 12.03.2001 fixing time scale of pay with effect from 01.07.2000.

4. It is contended by the respondents that the engagement of the petitioner's father does not come under the purview of Rule 149 of the 1988 Rules. But as per the instructions issued by the Registrar of Co-operative Societies, dated 21.08.2008, the petitioner's father was allowed to continue. As such, it is contended that the petitioner cannot claim compassionate appointment, as the initial appointment of his father itself is irregular and in violation of Rule 149 of the 1988 Rules.

5. The 3rd respondent has filed his counter affidavit separately stating that the 3rd respondent-Society has passed a resolution dated 18.02.2019 requesting the 1st and 2nd respondents to consider the petitioner's case for compassionate ground appointment in some other



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Co-operative Society, where the Night Watchman post is vacant and sent proposal accordingly on 18.02.2019. But it was rejected by the 2nd respondent. It appears, the said rejection order was not communicated to the petitioner by the respondents. It is stated in the said counter that in such circumstances, the 3rd respondent has engaged the petitioner on contract basis through Sun Security System, Salem on daily wages. It is stated by the 3rd respondent that without approval of the 1st and 2nd respondents, the 3rd respondent-Society cannot provide the petitioner compassionate appointment.

6. The petitioner filed rejoinder to the counter affidavits filed by the respondents, wherein it is stated that though the petitioner's father was appointed as Night Watchman in the 3rd respondent-Society on 12.04.2000 and thereafter, he was made permanent based on the settlement under Section 18(1) of the Industrial Disputes Act on 01.04.2001, basing on the said settlement, time scale has been fixed and paid to the father of the petitioner. As such, the petitioner denied the allegation that his father was appointed contrary to the Rules as



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absolutely false.

7. On consideration of the submissions made by the learned counsel on either side and perusal of the material available on record, it appears that the claim of the petitioner for compassionate appointment was not considered by the respondents on the ground that the father of the petitioner is not a permanent employee in the 3rd respondent-Society.

8. In the counter affidavit filed by the 3rd respondent, at Paragraph No.6, it is specifically stated that the petitioner's father was engaged as Night Watchman on temporary basis by the 3rd respondent as per Regulation No.1, dated 12.04.2000 and subsequently, he was made permanent with effect from 01.04.2001 *vide* 18(1) settlement, dated 12.03.2001 and fixed time scale of pay with effect from 01.07.2000.

9. Though the respondents are now contending that the engagement of the petitioner's father was only on daily basis and the said appointment was contrary to Rule 149 of the 1988 Rules, it appears, they



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are not submitting the real facts with respect to 18(1) settlement dated 12.03.2001. As and when the services of the father of the petitioner was made permanent as per the settlement under Section 18(1) of the Industrial Disputes Act, dated 01.04.2001 and basing on the said settlement, time scale has been fixed and paid to the father of the petitioner, the contention of the respondents that the appointment of the father of the petitioner is made contrary to the 1988 Rules would not stand for judicial scrutiny and such contention is unsustainable and untenable.

10. In my considered view, the respondents have to consider the claim of the petitioner for compassionate appointment in view of the indigent condition of the family of the petitioner. The sufferings of the family after death of the breadwinner of the family are established by the fact that the petitioner is working as Night Watchman in the 3rd respondent-Society on contract basis through Sun Security System, Salem on daily wages. Considering this fact, it has to be considered that the family of the petitioner is in indigent condition. Accordingly, this



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Court holds that the petitioner's family is in indigent condition.

11. This Court also visualised the situation in different angle. On one hand, the 3rd respondent is contending that no vacancy of Night Watchman is available in the 3rd respondent-Society and they recommended the case of the petitioner to the 1st and 2nd respondents to appoint him in any other Society on compassionate grounds. On the other hand, the 3rd respondent has been utilising the services of the petitioner as Night Watchman on contract basis through Sun Security System, Salem on daily wages.

12. In the considered opinion of this Court, admittedly, there is vacancy of Night Watchman post in the 3rd respondent-Society and without filling that vacancy on regular basis, they are utilising the services of the petitioner on daily wage on contract basis. As and when the need of Night Watchman is there in the 3rd respondent-Society, they have to fill that vacancy on permanent basis without engaging on contract basis.



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13. In view of the above factual position, this Court is of the opinion that the petitioner's father was made permanent employee in the 3rd respondent-Society in the light of the settlement arrived under Section 18(1) of the Industrial Disputes Act on 01.04.2001 and as such, there is no substance in the contention of the respondents that the petitioner is not entitled for appointment on compassionate grounds. Besides this, the 3rd respondent is utilising the services of the petitioner as Night Watchman for the past 4 years on daily wages through private agency. It is true that the 3rd respondent is making false statement that there is no vacancy for the post of Night Watchman in the society.

14. 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 hereinafter:

“15. The respondents have to understand the very purpose of providing compassionate appointment, which is meant for providing



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

15. 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



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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.”

16. 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



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administer justice having due regard in that direction.”

17. 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 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



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request for compassionate appointment; the authorities are expected to act as a Good Samaritan overlooking the cobwebs of technicalities.”

18. In the light of the settled proposition of law stated *supra* and for the above mentioned reasons, this Court is of the considered opinion that the petitioner has made out a case to issue a writ of mandamus directing the respondents to consider the claim of the petitioner seeking compassionate appointment without reference to the objections raised in their counters.

19. In the result, this writ petition is allowed directing the respondents to consider the claim of the petitioner for compassionate appointment in any suitable post within a period of six weeks from the date of receipt of a copy of this order.

20. 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 Joint Registrar of Co-operative Societies,
Salem Region, Salem.
- 2.The Deputy Registrar of Co-operative Societies,
Omalur Circle,
Salem District.

Pre-delivery Order made in
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Dated : 19.09.2023