



W.P. No. 6410 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 6410 of 2023

and

W.M.P. No. 6433 of 2023

A. Velvizhi

... Petitioner

-VS-

1. The Registrar of Co-operative Societies,
N.V.M. Maligai,
Kilpauk, Chennai – 600 010.
2. The Zonal Joint Registrar of Co-operative Societies,
Villupuram Division,
Villupuram.
3. The Deputy Registrar of Co-operative Societies,
Tindivanam,
Villupuram.
4. The Special Officer,
C.L.Spl.88, Nallathur Primary Agricultural
Co-operative Bank Ltd.,
Nallathur Post,
Tindivanam Taluk,
Villupuram District.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent in RC.No. 5858/2021/SF dated 21.07.2022 and quash the same and accordingly direct the Respondents to regularize the services of the Petitioners deceased sister A. Mandira Mozhi with effect from 02.05.1995 by following the judgment of the Hon'ble Court in W.A. No. 179 of 2013 dated 13.08.2021 and W.P. No. 21440 of 2015 etc., batch dated 19.02.2021 and consequently direct the Respondents to consider the claim of the Petitioner for compassionate appointment and accordingly grant her compassionate appointment in line with her educational qualification.

For Petitioner : Ms. A.Pramila

For Respondents : Mr. K.Karthick Jeganath,
Government Advocate (R1 to R3)

Mr. Stalin Abhimanyu,
Additional Government Pleader (for R4)

ORDER

Heard Ms. A.Pramila, Learned Counsel for the Petitioner, Mr. K.Karthick Jeganath, Learned Government Advocate appearing for the First to Third Respondents and Mr. Stalin Abhimanyu, Learned Additional Government



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Pleader appearing for the Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The sister of the Petitioner, viz., A.Mandira Mozhi, was working on daily wages basis as Assistant in the Co-operative Society of the Fourth Respondent from 02.05.1995 and she died in service on 06.03.1998. Subsequently, the Government of Tamil Nadu by G.O. Ms. No. 86, Co-operation, Food and Consumer Protection (CA2) Department dated 12.03.2001 had authorized the regularization of the employees recruited by the Co-operative Societies for the period from 09.07.1980 to 11.03.2001 exempting the intervention of employment exchange. Relying on such regularization of service of the said A.Mandira Mozhi, the Petitioner had sought for appointment on compassionate grounds in the services of the Fourth Respondent, but it was rejected and ultimately this Court by order dated 19.10.2021 in the Writ Petition in W.P. No. 23526 of 2021 filed by the Petitioner, held as follows:-

“7. It is noticed that the Petitioner has also already filed a writ petition in W.P. No. 31492 of 2002 on an earlier occasion which came to be disposed on 31.07.2002. Even on that day, the Single Judge of this Court has noted that there is a unexplained and unreasonable delay on the part of the authority concerned. The



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*impugned order has been now passed after a lapse of another 19 years. The Hon'ble Supreme Court in **Indian Bank -vs- Promila** [(2020) 2 SCC 729] has held that the appointment on compassionate ground has to be made in terms of the Government orders prevailing on the date of application. Considering the fact that the Hon'ble Supreme Court has held that the appointment on compassionate ground should be in terms of the prevailing Government order which rules as on the date of the application, this writ petition is disposed of by directing the Respondents to pass appropriate orders for appointing the Petitioner in terms of the prevailing Government orders in 1998. In case the Petitioner was entitled to be appointed in the year 1998 at the time when the initial application/representation sent for appointment, the Respondents shall appoint the Petitioner on compassionate ground. It is also made clear that the Respondents shall before appointing the petitioner as compassionate ground shall also be examine whether the family of the Petitioner was indeed in indigent circumstances. The said exercise shall be carried out by the Respondents within a period of six months from the date of receipt of a copy of this order. It is made clear that since the*



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Petitioner's sister already passed away on 06.03.1998, the service of the Petitioner's sister shall be deemed to have been regularized in terms of G.O.Ms.No.86 dated 12.03.2001 for the limited purpose of considering the request of the Petitioner on compassionate ground.

In furtherance to the said order, the Second Respondent by Proceedings in Rc. No. 5858/2021/SF dated 21.07.2022 passed the following order:-

“ And whereas, it is necessary to point out that in the consolidated Government Order in G.O. Ms. No. 18, Cooperation, Food and Consumer Protection Department dated 23.01.2020, in paragraph 4, the persons whose legal heir's are not eligible for consideration under compassionate ground appointment were mentioned as follows:-

- (i) Persons who are retained in service under F.R. 56(1)(c) after the date of superannuation.*
- (ii) Persons who are under temporary appointments, consolidated pay, daily wages, contract appointments and whose services are not regularized.*
- (iii) Persons who do not come under regular time scale of pay.*

And whereas, the sister of the Writ Petitioner



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A.Mandiramoshi, comes under the above category (ii) and (iii) and therefore the Writ Petitioner, the sister of A.Mandiramoshi is not eligible for consideration under compassionate ground appointment.

And whereas, in pursuance of the order of the Hon'ble Court dated 29.10.2021 in W.P. No. 23526 of 2021, the Third Respondent, viz., Deputy Registrar of Co-operative Societies, Tindivanam, in her letter Rc. No. 73/2022/Tho.Ve.Sa, dated 30.05.2022 has categorically stated that the Petitioner A.Velvizhi is not eligible for compassionate ground appointment.

And whereas the above facts clearly explain that the Petitioner is not entitled to be appointed in the year 1998 at the time, when the initial application/representation sent for appointment on compassionate ground as the Petitioner is not eligible for consideration under compassionate ground appointment as the sister of the Petitioner, viz., A.Mandiramoshi, was a daily wage employee whose service was not regularized and she does not come under regular time scale of pay.

Whereas insofar as the indigent circumstances of the Petitioner, it is ascertained from the Tindivanam Cooperative



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Urban Bank Ltd. vide letter dated 18.07.2022 of the bank that Tmt. A.Velvizhi is working as an outsourcing employee from 15.10.2014 and she is receiving salary of Rs. 7,500/- per month and her brother Mr. A.Nagarajan is working as Head Constable (2003 Batch No. 234/VL) at Tindivanam Police Station.

Whereas in the circumstances stated in the foregoing paragraphs, the service of the Petitioner's sister already passed away on 06.03.1998 cannot be deemed to have been regularized in terms of G.O. Ms. No. 86, Cooperation, Food and Consumer Protection Department dated 12.03.2001 for the reasons that the G.O. Ms. No. 86, Cooperation, Food and Consumer Protection Department dated 12.03.2001 was held to be a nullity in terms of the order dated 28.07.2004 in C.A. 1413 of 2003 of the Hon'ble Supreme Court of India.

And whereas, this order is passed in compliance of the order dated 29.10.2021 in W.P. No. 23526 of 2021 and W.M.P. No. 24749 of 2021.”

The said order is assailed in this Writ Petition.



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3. It would be evident from the facts narrated supra that the claim of the

Petitioner for compassionate appointment had been directed to be considered by this Court in the order dated 29.10.2021 in W.P. No. 23526 of 2021 on the premise that the services of the sister of the Petitioner shall be deemed to have been regularized in terms of G.O (Ms) No. 86, Co-operative Food and Consumer Protection (CA2) Department dated 12.03.2001 issued by the Government of Tamil Nadu. As rightly pointed out by the Second Respondent in the impugned order, the Division Bench of this Court in the decision in ***L.Justine -vs- Registrar of Co-operative Societies, Chennai*** [(2002) 4 CTC 385] has categorically held that either the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 or 18 thereof, shall have no application to the staff of the Co-operative Societies appointed without adequate qualifications or beyond the cadre strength for the period from 09.07.1980 to 11.03.2001. While affirming the said decision, the Hon'ble Supreme Court of India in ***A.Umarani -vs- Registrar, Co-operative Societies*** [(2004) 7 SCC 112] has ruled that appointments in co-operative societies across the State of Tamil Nadu would have to be strictly made only against sanctioned vacancies on determination of cadre strength following the prescribed procedure for recruitment including reservation as applicable. The



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Full Bench of this Court in the decision in ***R.Rathakrishnan -vs- Deputy***

Registrar of Co-operative Societies, Dindigul [(2007) 5 CTC 369], while

holding that the State Government cannot exercise its jurisdiction under Article 162 of the Constitution of India or under any Act to direct regularisation of service of any employee, including employees of a Co-operative Society, if the appointments have been made in contravention of the statutory rule or constitutional mandate, has further clarified the legal position as follows:-

- (i) G.O. Ms. No. 86 dated 12.03.2001 issued by the Government of Tamil Nadu, was declared as a nullity, the State Government having no power to issue such order;
- (ii) Rule 149 framed under the Tamil Nadu Co-operative Societies Act, 1983, reflect the legislative recruitment policy and such provisions are mandatory in nature;
- (iii) regularisation cannot be the mode of recruitment by any State within the meaning of Article 12 of the Constitution of India or any body or authority governed by the statutory Act or Rules framed thereunder; and
- (iv) appointments made in violation of mandatory provision of the statute ignoring the minimum educational qualification, etc., is wholly illegal, which cannot be cured by taking recourse to regularisation. Those who



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have come by the backdoor should go through that and for that no show cause notice is required to be issued.

Having regard to this unassailable legal position, there is nothing to show that there has been any determination so far by the competent authority that the appointment of the sister of the Petitioner, viz., A.Mandira Mozhi, has been in accordance with law so as to treat her services to be in order for the purpose of considering the case of the Petitioner for compassionate appointment on her demise.

4. That apart, it must be recapitulated that the legal position is well settled that the claim for compassionate appointment is an exception to Articles 14 and 16 of the Constitution which guarantees equality of opportunity to all eligible citizens to participate in the selection for any public employment. Appointment on the mere ground of descent, would be a direct infraction of Article 16 of the Constitution. The exception on which compassionate appointment is sustained is for the reason that it seeks to tide over the sudden crisis in the family of the deceased bread winner. The principles governing compassionate appointment have been succinctly explicated by the Hon'ble Supreme Court of India in ***State of West Bengal -vs- Debabrata Tiwari*** (Order dated 03.03.2023 in Civil Appeal Nos. 8842 to 8855 of 2022) in the following words:-



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“7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:-

- (i) *That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.*
- (ii) *Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.*
- (iii) *Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate*



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employment cannot be claimed or offered after a lapse of time and after the crisis is over.

- (iv) That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.*
- (v) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.*

7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of



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the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.”

In the light of the said principles, it becomes apparent that the family of the deceased employee has been able to tide over the crisis with the passage of time and if any indulgence is now shown after 25 years from the time of death of the deceased employee brushing aside the germane aspects highlighted supra, it would unwittingly tantamount to unduly favouring the Petitioner to the



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detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced.

5. It would be evident from the foregoing discussion that the Petitioner neither has any enforceable right to claim appointment on compassionate grounds from the Respondents, nor the Respondents have any legal obligation to take a decision on granting the same to her. In this backdrop, reference must be made to the ruling of the Hon'ble Supreme Court of India in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], in which it has been expounded as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed.



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*Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs- State of U.P.** (AIR 1962 SC 1183)). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."*

Viewed from that perspective, there does not appear to be any infirmity in the impugned order passed by the Second Respondent requiring interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.



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6. Though obvious, it is clarified that refusal by the Court to entertain this Writ Petition shall not be construed as precluding the Petitioner, if she is otherwise eligible and not disqualified, from participating in any recruitment for public appointment following the prescribed procedure.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.04.2023

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Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 26.02.2024.

To

1. The Registrar of Co-operative Societies,
N.V.M. Maligai,
Kilpauk, Chennai – 600 010.
2. The Zonal Joint Registrar of Co-operative Societies,
Villupuram Division,
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P.D. AUDIKESAVALU, J.

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