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W.P.No.20930 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.20930 of 2016
and WMP No.35399 of 2017

S.Vijaya

... Petitioner

Vs.

1. The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai – 600 001.

2. The Secretary,
Chennai Port Trust,
Rajaji Salai, Chennai – 600 001.

....Respondents

Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in his impugned proceeding bearing No.SCT5/1073/2014/GA dated 01.04.2015 and quash the same and consequently direct the respondents to forthwith appoint the petitioner's son Mr.Nithin Abishek on compassionate ground in any suitable post according to his qualification or in the alternate pay compensation and rehabilitate the petitioner's family.



WEB COPY

W.P.No.20930 of 2016



For Petitioner : Mr.K.Raja

For Respondent : Mr.Krishna Ravindran

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records of the second respondent, Secretary, Chennai Port Trust, Chennai in proceedings NoSCT5/1073/2014/GA dated 01.04.2015 and quash the same and direct the respondents, viz., the Chairman, Chennai Port Trust and the Secretary, Chennai Port Trust, Chennai to appoint the son of the petitioner Mr.Nithin Abishek on compassionate grounds to any suitable post in accordance with his qualification or in the alternate to pay compensation and rehabilitate the family of the petitioner.

2. The Writ Petitioner in the affidavit has stated that her husband K.S.Aadhisivam was working as ACOS-II in Stores Department of Chennai Port Trust from 1977 till 2001. He unfortunately died on 02.07.2001. She further claimed that her two daughters and the son for whom now she claims compassionate appointment are the surviving legal heirs.

3. The petitioner has stated that she had applied for compassionate appointment for her eldest daughter A.Ramya on 19.12.2001. She has further stated that consequent to such application, the second respondent, Secretary, Chennai Port Trust, had sought production of educational records of the



daughter. Thereafter, on 15.05.2003, again the second respondent called upon the petitioner to produce the original certificates and she claimed that they had been again produced. Thereafter, there were no further communication from the respondents. It was then informed to her that the file of the daughter was closed.

4. The petitioner has further stated that in the year 2012, the policy had changed, whereby instead of granting compassionate appointment, the Government had decided to pay a sum of Rs.35,000/- every year, for the number years in which such files were kept pending with the maximum ceiling of Rs.4,90,000/-. The petitioner therefore sought for at least this compensation to be paid to her vide letter dated 01.02.2014. The said request was rejected necessitating the petitioner to file the present Writ Petition.

5. A counter affidavit has been filed by the respondents, whereby, the respondents had taken a stand that the petitioner has never made any application seeking compassionate appointment. They had further stated that the petitioner had not produced any document relating to the educational qualification of the daughter. They had also stated that they had communicated to the petitioner herein at successive intervals calling upon the petitioner to produce necessary documents. Neither the petitioner nor the daughter turned up for a long time. It was very specifically stated that since



the documents had not been filed, the name of the daughter as a prospective candidate for grant of compassionate appointment was never registered in the records of the respondents.

6. It was also stated in the counter that after about 10 years, upon coming to know about the compensation is being granted, the petitioner had filed an application seeking compensation. It had been stated that compensation could be granted only to those whose names are available in the records. Since the name of the petitioner or her daughter was not available in the records, even compensation could not be granted.

7. When the Writ Petition came up for hearing based on the averments made in the affidavit and in the counter affidavit, it was seen by this Court that the petitioner had actually made an application. My predecessor, by noting dated 23.01.2023, had also pointed out to the submission made by the respondents that the petitioner had actually made an application on 19.11.2001/29.12.2001. It was therefore observed that the counter affidavit did not contain true and honest information.

8. This Court, on examining the records had directed the respondent to deposit costs of Rs.25,000/- before the Registry of this Court and also directed the personal attendance of any responsible official from the respondents.



9. Subsequently, the cost of Rs.25,000/- had also been deposited as directed and Ms.A.Dheepiga, Senior Assistant Secretary, Chennai Port Trust, who had filed the additional counter affidavit, was also present in Court.

10. In the additional counter affidavit, after admitting to the application made by the petitioner seeking compassionate appointment for her daughter, it was contended that the petitioner herself was gainfully employed in the Central Government in the Service Tax/GST Department. It was also contended that she had retired as Superintendent in the said Department on 31.05.2022. It was specifically contended that this particular information of the petitioner being gainfully employed was never disclosed by the petitioner herein.

11. It was also stated that since the petitioner and her daughter did not respond to the letters sent seeking the details of educational qualification of the daughter, the application was found to be not in order. It was also found that the petitioner was not eligible for grant of compassionate appointment either for herself or for her daughter.

12. It was further stated that the issue of compensation would not arise since it was a one time offer made consequent to a policy decision taken by the Central Government and the said policy is not in force any longer. It was therefore contended that this Writ Petition should be dismissed.



13. A rejoinder had been filed by the petitioner herein, wherein it was stated that the petitioner has been receiving family pension consequent to the death of her husband from the respondents. She did not receive Dearness Allowance. Dearness Allowance will not be paid when the person who receives family pension is gainfully employed in a Government service. It is therefore contended that since the petitioner had not received Dearness Allowance, it should be understood that the respondents knew that the petitioner was gainfully employed in Government service. It was also stated that after the petitioner had retired after attaining the age of superannuation, she had made an application to receive the Dearness Allowance. The facts stated in the affidavit filed in support of the Writ Petition were again reiterated by stating that an application has actually been made.

14. Heard the learned counsel for the petitioner as well as the learned standing counsel for the respondents.

15. The records reveal that the petitioner had made an application 29.12.2001 seeking compassionate appointment for her daughter consequent to the death of her husband, who was an employee of the respondents, on 02.07.2001. On the date of death of her husband, her daughter was aged 14 years, her date of birth being 03.04.1988. She was studying in 9th standard. Naturally, no employment could be offered to the daughter at that point in



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16. It is the contention of the respondents that they had thereafter issued communications to the petitioner calling upon the petitioner to produce the educational certificates of the daughter. The documents in this regard and the application made are contradictory with the petitioner asserting that documents had actually been furnished and the respondents denying and disputing that particular fact.

17. In a Writ Petition, a decision has to be taken is on the basis of the affidavit and counter affidavit and when there are disputed averments made by either side, the Court can never come to a positive conclusion on that particular aspect. Even otherwise, the policy had changed in the interregnum and the respondents have now been instructed by the Central Government that compassionate appointment cannot be granted as a matter of right but rather the dependants should be granted compensation. It had been stated that after a period of three years, the pending file should be closed and the applicants therein should be paid a sum of Rs.35,000/- for each completed waiting year subject to a minimum of Rs.1,25,000/- and a maximum of Rs.4,90,000/-.

18. Accordingly, a list of 659 applicants were identified and they were paid compensation. However, the petitioner was not one of them. Therefore, awakening in the year 2014, the petitioner had sent a letter to the respondents



seeking compensation. But by that time, it is the contention of the respondents that the scheme had elapsed. The impugned order however does not reveal all these facts.

19. The impugned order dated 01.04.2015 referred to the letter of the petitioner dated 01.02.2014 wherein the petitioner again reiterated the grant of compassionate appointment to her daughter or in the alternate compensation. It was stated as follows:

'With reference to the above, it is informed that, since you have not registered your name for compassionate appointment, the request for enlisting your name at this distant date cannot be considered. You are further informed that, no more representation in this regard will be entertained in future.'

20. The impugned order proceeds on the basis that the petitioner had never registered her name or her daughter's name seeking compassionate appointment and therefore her request for enlisting her name cannot be considered.

21. This fact is not a correct fact. The petitioner has given her application and it is since this Court had found that these facts stated in the counter affidavit are not correct and costs were imposed upon the respondents. They have then come up with an additional counter affidavit stating that the petitioner had actually made an application but however stating that the petitioner was gainfully employed in GST Department and



24. Quite apparently, no application has been made within the period of three years from the date of death of K.S.Aadhisivam, seeking compassionate appointment for her son Nithin Abishek by the petitioner and the only application available is in the name of her daughter.



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25. The petitioner by filing the present Writ Petition had come up with a particular request and had changed the applicant from the daughter to the son. The Rules in this regard are very clear that if a son or daughter is a minor at the time of death of the employer and the widow makes an application on behalf of either the son or daughter, such application should still be made within three years. After the son or daughter attains the age of majority, they should independently apply and if it is done so, it could be considered as a continuation of the earlier application made by their mother on their behalf when they were minors.

26. In the instant case, there is no record to show that the petitioner had ever applied seeking compassionate appointment for the son. Even though the petitioner has originally made an application for her daughter, it is not known why the petitioner has suddenly forsaken her two daughters once and for all and sought a compassionate appointment for her son.

27. Even though the impugned order is not happily worded and is passed based on a fact which is not correct, the relief sought for in this Writ Petition cannot be granted. The Court cannot direct the respondents when there is no policy now in vogue. The policy upon which the petitioner sought a benefit, has been changed and it has been stated that the compensation could not be granted as the policy is not in force as on date.



W.P.No.20930 of 2016

28. Viewed from any angle, the relief sought for by the petitioner cannot be granted to the petitioner. This Writ Petition stands dismissed. No costs. Connected Miscellaneous Petition is also dismissed.

29. The respondents, if they so desire, may file a payment out application for refund of the cost deposit consequent to the directions of this Court. If and when such application is made, the Registry is directed to return back the said deposit to the respondents.

17.08.2023

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No
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Rajaji Salai, Chennai – 600 001.
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