



W.P.No.9008 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.9008 of 2023
and
W.M.P.Nos.9128 and 9129 of 2023

M.Rama

... Petitioner

Vs.

1.The Joint Registrar,
Cooperative Department,
Villupuram Zone,
Villupuram.

2.The Chairman & Managing Director,
Central Cooperative Bank Ltd,
Villupuram,
Villupuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in the proceedings in Na. Ka. No. 3657 / 2022 / SaPa dated 07.10.2022 on the file of the 1st respondent and quash the same as illegal, unlawful and consequently direct the 1st respondent to set aside the removal of service of the petitioner's late husband namely V.Murthy and



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grant all terminal and retirement benefits to the petitioner and her family and appoint her as a sub staff in any one of the branches at Villupuram Central Cooperative Bank under the compassionate appointment.

For Petitioner : Mr.M.E.Rani Selvam
For R-2 : Mr.G.Ameedius,
Government Advocate
For R-1 : Mr.M.Bindran
Additional Government Pleader

ORDER

The petitioner's husband V.Murthy was originally married to one Kavitha. Through her, he had two children. After the death of Kavitha, he had married the petitioner herein on 08.11.2010 and through the petitioner, one son was born to them. The petitioner's husband was appointed as an 'Assistant' in the year 1997 in the second respondent Bank. After serving there, he was transferred and posted in Thiyyagadurugam branch of the second respondent bank on 29.06.2012. At that stage, he had sent a medical leave application to the second respondent on 09.07.2012 requesting for a leave for a period of 3 months, which period had expired on 09.10.2012. Thereafter, when he did not



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seek for extension of leave, charges came to be framed against him on 18.04.2013, stating that, he had failed to join the transferred place and that he had not submitted a proper application seeking for extension of leave.

2.In the domestic enquiry conducted, the petitioner had participated and had given his defense statement. The Enquiry Officer had held charges against her husband to have been proved and the disciplinary authority had called for his further explanation. However, since no such representation was given, the second respondent herein had accepted the report of the Enquiry Officer and imposed the punishment of dismissal from service of the petitioner's husband.

3.After the dismissal order was passed and just within two months, her husband died on 04.04.2015, and was survived by the petitioner and her three children. When she had made a request for appointment on compassionate grounds for herself, the request was rejected on 22.05.2015 by stating that, since her husband was dismissed from service, she cannot claim compassionate appointment. She had challenged this



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rejection order before this Court in W.P.No.19235 of 2015 and by an order dated 01.07.2015, this Court had granted liberty to the petitioner to challenge the termination order of her husband.

4.In this background, the petitioner had preferred an Appeal under Section 153 of Tamil Nadu Co-operative Societies Act 1983, challenging the dismissal order dated 25.02.2015. The Appeal was summarily rejected by the first respondent herein, on the ground that the dismissal order of an employee cannot be challenged by a legal heir. This rejection was put under challenge before this Court in W.P.No.39803 of 2015 and by an Order dated 22.04.2022, this Court had held that the petitioner is deemed to be an aggrieved person to challenge the order of dismissal of her husband under Section 153 of the Act and thereby, set aside the rejection order dated 10.09.2015 and directed the respondents to pass final orders on the Appeal petition filed by the petitioner within a period of three (03) months from the date of which the review petition was taken on file.

5.In this background, the first respondent had taken up the petitioner's Appeal and rejected it through an impugned order in



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Na.Ka.No.3657/2022/Sapa dated 07.10.2022, on the sole ground that, since her husband was dismissed from service, the petitioner cannot claim compassionate appointment. However, there was no reference to the challenge made by the petitioner to the dismissal order of her husband dated 25.02.2015. This rejection order is put under challenge in this present writ petition.

6.The learned counsel for the petitioner submitted that, when this Court had granted liberty to the petitioner to challenge the order of her husband's dismissal from service and by a subsequent order had also held that the petitioner is entitled to challenge the dismissal order of her husband and eventhough, she had raised several grounds challenging the sanctity of the dismissal order, the first respondent herein had not considered any of these grounds touching upon the order of dismissal, but had simply reiterated that the legal heir of a deceased employee, who had been dismissed from service cannot seek for compassionate appointment. In the absence of any consideration to the grounds touching upon the dismissal order cannot be sustained.



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7. On the contrary, the learned Government Advocate representing the respondents herein, placed reliance on the averments made in the counter affidavit and submitted that, when charges were leveled against the petitioner's husband, ample opportunity was extended to him to participate in the domestic enquiry and thereafter, the Disciplinary Authority had considered the Enquiry Officer's report and passed the impugned order. He further submitted that, since there were inordinate days of unauthorised absence, the charges are serious in nature and therefore, the punishment of dismissal from service is proportionate to the charges.

8. He also submitted that the marriage certificate of the petitioner issued by the temple is not a valid one and since the petitioner has failed to establish that she was married to the late employee, the order of rejection of her request for the compassionate appointment cannot be found fault with.

9. I have given careful consideration to the submissions made by



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the respective Counsels.

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10.It is unfortunate that, when this Court in its earlier Order passed in W.P.No.19235 of 2015 dated 01.07.2015 had granted liberty to the petitioner herein to challenge the dismissal order of her late husband and subsequently, through another order passed in W.P.No.39803 of 2015 dated 22.04.2022 had held that the petitioner is deemed to be an aggrieved person for the purpose of challenging the dismissal order of her husband and consequently, directed the respondents to pass orders on her Appeal petition, in which she had challenged both the dismissal order of her husband, as well as the request for compassionate appointment, the first respondent had totally disregarded these directions and had simply stated that the legal heir of a late employee, who has been dismissed from service cannot seek for compassionate appointment. The irony is that the first respondent had extracted or rather copied and pasted the grounds raised by the petitioner in her appeal petition, in which, she has challenged the dismissal order of her husband and without any application of mind, had addressed her dis-entitlement to seek for compassionate appointment.



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11.This is the second time, such an order of rejection is made. Earlier, after the liberty was granted by this Court and an Appeal petition was filed, it was summarily rejected on the ground of maintainability. When it was clarified by this Court again that she can maintain the Appeal and had directed to pass orders within a stipulated time, once again the first respondent had ventured to stick on to his baseless and illegal justification and thus, rejected the request.

12.In this background, I had perused the grounds raised by the petitioner in her Appeal petition, wherein, she had challenged the order of dismissal of her husband from service. Therein, she has stated that her husband was affected by a serious medical condition, which the doctors were unable to trace and therefore, had been taking Siddha treatment at Kerala, owing to which, he was unable to attend his duties. She had also stated in the Appeal petition that her husband had put in more than 16 years of service and only because of this incurable and hereditary disease, he was unable to attend the office and therefore, had sought for set aside the order of dismissal dated 25.02.2015.



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13.In the same Appeal grounds, she had also attacked the order of rejection of her request of compassionate appointment by stating that, she was a legally married wife of the late employee and since she is now taking care of her three small children, all by herself, with no income of her own, she may be considered for appointment on compassionate grounds.

14.As stated earlier, this is the second order of rejection by the first respondent herein, without any application of mind and without addressing any of the grounds raised by the petitioner. In this background, this Court was constrained to consider the grounds raised by the petitioner in her Appeal petition filed before the first respondent, by taking note of the fact that no useful purpose would be served in once again remitting back the matter to the first respondent herein and that further serious prejudice would be caused to petitioner, who has been unnecessarily made to run from pillar to post for the past 8 years.

15.I am convinced with the reasons raised in the petition, which



16. In the result, the order of the dismissal dated 25.02.2015 passed by the first respondent herein, as confirmed by the first respondent in the order passed in review petition dated 03.08.2015, are set aside. Consequently the following directions are issued:-

(i) The respondents herein shall forthwith pass orders, notionally reinstating the petitioner's husband V.Murthy into service from 25.02.2015 onwards and record that since he had died on 04.04.2015, the petitioner would be eligible for death cum retirement benefits.

(ii) Such orders as aforesaid shall be passed, within a period of four (04) weeks from the date of receipt of a copy of this order.

(iii) The order dated 22.05.2015 rejecting the petitioner's request



(iv) The second respondent shall forthwith take up the application by the petitioner dated 16.04.2015, seeking for compassionate appointment and pass favourable orders, appointing the petitioner on compassionate grounds to any suitable post, within a period of 3 months from the date of receipt of a copy of this order. While passing such orders on the petitioner's application dated 16.04.2015, the second respondent is directed to seek for all supporting documents to substantiate that the petitioner herein is the legally wedded wife of the late employee. When satisfied, shall issue necessary posting orders.

17. With the above directions, the Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No
Speaking order/Non-speaking order

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M.S.RAMESH,J.

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To

- 1.The Joint Registrar,
Cooperative Department,
Villupuram Zone,
Villupuram.
- 2.The Chairman & Managing Director,
Central Cooperative Bank Ltd,
Villupuram,
Villupuram District.

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