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W.P. No. 11877 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

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

W.P. No. 11877 of 2020

J.Saravanan

... Petitioner

-VS-

- 1.The Joint Registrar
O/o.The Joint Registrar of Co-operative Society
Cuddalore Region, Cuddalore.
- 2.The Deputy Registrar
Office of the Deputy Registrar of Co-operative
Society, Virudhachalam.
- 3.Co-operative Sub Registrar / Managing Director
Virudhachalam Agricultural Producer Co-operative
Marketing Society Ltd., Virudhachalam
Cuddalore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the respondents to consider the claim of petitioner for appointment on compassionate grounds in the light of his representation dated 13.11.2019 based on the resolution passed by the third respondent on 20.02.2020.



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For Petitioner : Mr. M.Ravi Bharathi
For Respondents : Mr. B.Vijay
Additional Government Pleader
(for R1 and R2)
Mr. L.P.Shanmugasundaram
(for R3)

ORDER

Heard Mr. M.Ravi Bharathi, Learned Counsel for the Petitioner, Mr. B.Vijay, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. L.P.Shanmugasundaram, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The father of the Petitioner, viz., P.Jayaraman, was engaged as Salesman on consolidated pay of Rs. 275/- with effect from 01.08.1987 in the Co-operative Society of the Third Respondent pursuant to Resolution No. 3 dated 31.08.1987 without reference to employment exchange and subsequently, his pay was fixed in the time scale of Rs. 400-10-450-15-525 by Resolution dated 20.10.1995 of the Special Officer and he died in service on 11.08.2013. The Petitioner had made a representation dated 13.11.2019 for appointment on



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compassionate grounds. It is claimed that though the Third Respondent by letter dated 20.02.2020 had forwarded the representation made by the Petitioner for compassionate appointment to the First Respondent for further action, it did not evoke any response, which has necessitated the Petitioner to approach this Court.

3. At this juncture, it must be pointed out that 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. However, 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***



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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 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



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(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 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 father of the Petitioner, viz., P.Jayaraman, has been in accordance with law so as to treat his services to be in order for the purpose of considering the case of the Petitioner for compassionate appointment on his demise.

4. In this context, 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



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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:-

“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*



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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 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



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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 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.”



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Apart from failing to produce any scheme for compassionate appointment in the

Co-operative Society of the Third Respondent, the Petitioner, who was himself aged about 29 years at the time of demise of his father as per the Legal Heirship Certificate produced by him, ought to have got himself suitably employed by then and nothing prevented him from applying for recruitment to any post depending upon his competence. It is 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 shown brushing aside the germane aspects highlighted supra, it would unwittingly tantamount to unduly favouring the Petitioner to the 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 him. 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:-



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"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. 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



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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...."

As such, there is absolutely no justification for issuing any direction to take further action on the letter dated 20.02.2020 from the Third Respondent to the First Respondent forwarding futile representation of the Petitioner in which the relief claimed by him cannot at all be considered by the concerned authorities.

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 he 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. No costs.

28.03.2023

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Index: Yes/No

Note: Issue order copy by 26.02.2024.



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To

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P.D. AUDIKESAVALU, J.

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