



W.P.No.20460 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.20460 of 2023

P.Arunachalam

... Petitioner

Vs

1. The Secretary to Government,
Department of Health Services,
Fort St. George, Chennai – 600 009.

2. The Director,
Public Health and Preventive Medicine,
DMS Campus, Teynampet, Chennai.

3. The Deputy Director,
Health Services, Vengikkal,
Thiruvannamalai, Thiruvannamalai District.

... Respondents

Prayer:- Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Mandamus directing the second respondent to appoint the petitioner in any suitable job on compassionate ground based on his representation dated 03.04.2023.



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For Petitioner : Mr.D.Thirumoorthy
for Mr.D.Ramesh Kumar

For Respondents : Mr.M.Alagugoutham
Government Advocate

ORDER

This Writ Petition has been filed to direct the second respondent to appoint the petitioner in any suitable job on compassionate ground based on his representation dated 03.04.2023.

2. The case of the writ petitioner is that the father of the petitioner was suspended from service on 30.07.2014 a day prior to his superannuation and he died on 18.09.2018. Hence, the petitioner had made a representation to the third respondent requesting for compassionate appointment and the same was rejected by the second respondent. As against which, the petitioner has made a representation to the second respondent and the same has not be considered so far. Hence, seeks a direction to the second respondent to dispose of the representation made by the petitioner.



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3. On a perusal of the affidavit filed along with the Writ Petition, it is seen that the petitioner's father was facing disciplinary proceedings and he was suspended one day prior to his superannuation. In this regard, in the judgment of this Court in W.P.No.12831 of 2011, dated 8.06.2021 wherein a similar relief is sought and based on the clarification issued by the Government of Tamilnadu [Labour and Employment] letter No.403007A/Q1/90 dated 09.03.1991, in para 7 of the Order in the Writ Petition in W.P.No.12831 of 2021, this Court has held as follows :

“The learned Government Advocate is not inclined to get proper instructions from the Government. However, seeing the issue on merits, this Court is also of the view that the clarification issued by the Government is unethical. It will be against public policy to give benefit to the legal heirs of employees to seek compassionate appointment after the death of Government servant who had served his complete tenure till superannuation. The Government does not provide or enable the legal heirs of retired employees to seek appointment on compassionate ground. If the Government intends to give the benefit of seeking compassionate appointment to the legal heirs



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of employees whose retirement was postponed due to pendency of disciplinary proceedings, that will be not only unethical but also against public policy. The Government cannot have a policy which is defective and discriminatory. If the Government letter is given effect to in one case, that may pave way for legal heirs of all the retired employees to seek appointment on compassionate ground. In this case, no statutory Rule is produced to show that there is any statutory support or Regulation to sustain such clarification. Hence, this Court is not inclined to grant the relief sought for by the petitioner based on the only letter of Government, which is not supported by service Rules. There is no estoppel against statute.”

4. In view of the above Order, this Court is of the view that the application made by the petitioner seeking compassionate appointment, as a legal heir of a suspended employee, is not permissible. Hence, the direction sought by the petitioner to consider his representation cannot be granted.



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5. At this stage, the learned counsel for the petitioner would submit that the retirement benefits of his father has not been disbursed so far and hence, seeks a direction to the respondents to disburse the retirement benefits of the father of the petitioner.

6. In view of the submissions of the learned counsel for the petitioner, the respondents shall disburse the retirement benefits of the father of the petitioner to the legal heirs as per rules within a period of three months from the date of receipt of a copy of this Order.

7. Accordingly, this Writ Petition is disposed of. No costs.

14.07.2023

Index:Yes/No

Neutral Citation : Yes/No

vrc



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N.SATHISH KUMAR, J.

VTC

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