



W.P.No.27094 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM :

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.27094 of 2021

and

WMP.No.28565 of 2021

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M.Kazhagamani

.. Petitioner

Versus

1. The Principal Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Chennai - 600 009.

2. The Director of Public Health & Preventive Medicine,
DMS Complex, Teynampet,
Chennai 600 018.

3. The Deputy Director of Health Services,
No.51, Perumal Keela Veedhi,
Velipalayam, Nagapattinam 611 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the third respondent vide Na.Ka. No.4471/A1/2019 dated 07.09.2021 and quash the same and consequently to direct the respondents to appoint the petitioner as Driver on compassionate grounds by considering his applications dated 24.06.2019, 08.11.2019 & on 12.08.2020, 03.04.2021 in the light of the orders issued by the second respondent in proceeding Na.Ka.No.10426/Va. Pa/A3/2019 dated 27.01.2020 within a stipulated period of time.



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For Petitioner : Mr. P. Ganesan
For Respondents : M/s. P. Vijayadevi
Government Advocate

ORDER

Seeking to quash the order dated 07.09.2021 passed by the third respondent and to issue a consequential direction to the respondents to appoint the petitioner as Driver on compassionate grounds by considering his applications dated 24.06.2019, 08.11.2019 & on 12.08.2020, 03.04.2021 in the light of the orders issued by the second respondent in proceeding Na.Ka.No.10426/Va. Pa/A3/2019 dated 27.01.2020 within a stipulated period of time, this writ petition is filed.

2. In the affidavit filed in support of the writ petition, it is stated that the petitioner's father R. Mamallan had two wives namely 1. Late Mrs.Jayanthi and 2. Mrs. Sheela Devi. It is stated that the petitioner and his sister Kavimozi were born to his father through first wife and step sister namely Ms.Jayasri was born through the second wife namely Mrs.Sheela Devi. The petitioner's father R.Mamallan contracted the second marriage after demise of his first wife and hence his father's second marriage is a valid marriage. The petitioner's father died on 06.05.2019 and after death of his father he was not provided with any financial support from his step mother



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and he is struggling to eke his livelihood. The petitioner therefore submitted an application to the third respondent on 24.06.2019, 08.11.2019 & on 12.08.2020, 03.04.2021 seeking compassionate appointment to the post of Driver. Along with the application, the petitioner has also enclosed the No Objection letter from his sister Kavimozhi, his step mother and step sister, who are the legal heirs of the deceased father. On receipt of the same, the third respondent vide his proceedings Na.Ka.No.4471/A1/2019 dated 15.11.2019 forwarded the petitioner's application for compassionate appointment to the second respondent. The second respondent in turn returned the application, vide his proceedings Na.Ka.No. 104246/ Va.Pa/ A3/ 2019 dated 27.01.2020 by directing the third respondent to take steps to appoint the petitioner as Driver on compassionate grounds as per the existing rules and as per the instructions issued by the Government in Letter No.30238/AB1/2018-3 dated 09.01.2019, which was also communicated to all the Deputy Director of Health Services vide proceedings of the second respondent in R.No.8084/E4/2019/S3 dated 01.02.2019. Since the third respondent is the appointing authority for the post of driver in the Department of Public Health in Nagapattinam District, the second respondent directed the third respondent to consider the claim of the petitioner. However, the third respondent did not consider the application of the petitioner for more than one



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year for the post of Driver, hence, the petitioner filed WP. No. 12848 of 2021 to dispose of his application. By order dated 18.06.2021, this Court directed the third respondent to consider the application of the petitioner and to dispose it on merits. Pursuant to such direction, the third respondent rejected the application of the petitioner by citing various reasons.

2.1. The petitioner further submitted that as per G.O.(Ms).No.18, Labour and employment (Q1) Department, dated 23.01.2020, the petitioner is eligible for appointment on compassionate ground. As per the said Government Order, if any person in the family of the deceased Government Servant's was employed even before the death of the Government Servant but was living separately without extending any help, then the case of other eligible defendant can be considered. In this case his step mother is working as Village Health Nurse at Government Primary Health Centre, Vadavoor, Nagapattinam District. The petitioner's father was working as Superintendent in the office of the Deputy Director of Health Service, Nagapattinam and died on 06.05.2019. The petitioner therefore submitted his application seeking compassionate appointment to the post of driver within a period of three years and the other legal heirs have also given their consent and no objection to appoint the petitioner as Driver on compassionate grounds. The learned



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counsel would further submit that as per G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, the petitioner is eligible for appointment on compassionate ground wherein it is clearly mentioned that the family pension of the deceased employee and the immovable property like living house of the employee, while assessing the income of the family movable / immovable properties should be taken into accounts and certificate is to be issued by the jurisdiction Tahsildar. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress and it is improper to keep such case pending for years. If there is suitable post for accommodating the petitioner on compassionate ground. The claim of the petitioner ought not to have been denied as it would amount to denial of economic and social justice as enshrined in the constitution. Therefore, the petitioner has filed the present writ petition for the relief stated supra.

3. The learned counsel for the petitioner submitted that the petitioner has no independent source of income by means of any employment. The petitioner's step mother is admittedly employed as Village Health Nurse at Government Primary Health Centre, Vadavoor, Nagapattinam District.



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However, the petitioner's step mother is residing separately and she is not extending any financial support to the petitioner. The petitioner has not suppressed the fact that his father contracted two marriages and that his step mother is employed as Village Health Nurse. The fact remains that on the death of the father of the petitioner, the respondents have not provided any appointment on compassionate grounds. The petitioner's step mother was employed as Village Nurse even when his father was working in the Health Department. The petitioner also submitted his application within three years from the date of death. While so, the pecuniary benefits received by the petitioner on the death of his father or the employment of the step mother cannot be put against the petitioner to deny him appointment on compassionate grounds. The reasoning assigned by the third respondent to deny appointment to the petitioner on compassionate grounds is wholly unjust, arbitrary and illegal and therefore, the learned counsel for the petitioner prayed for allowing this writ petition.

4. The learned Government Advocate appearing for the respondents, by placing reliance on the counter affidavit of the third respondent dated 19.01.2022, submitted that the legal heir certificate issued by the Tahsildar Nagapattinam and the no objection letters from the rest of the legal heirs of



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the deceased Government Servant has been enclosed by the petitioner along with the application seeking appointment on compassionate appointment.

The integrated certificate submitted by the petitioner dated 29.10.2019 was issued by the Tahsildar, Nagapattinam to the petitioner vide MM.No.7387/2019A7 dated 25.10.2019, in which the names of the legal heirs of the deceased father of the petitioner and property owned by the family members namely mentioned. This certificate was issued on 25.10.2019 and the proposal was sent by the third respondent to the second respondent to consider the petitioner's application for the post of driver on the compassionate ground appointment on 15.11.2019. The third respondent vide letter Na.Ka.No.4471/A1/2019 dated 15.11.2019 requested the second respondent to consider the petitioner's application to appoint the petitioner as a driver on compassionate ground. In reply the second respondent vide Na.Ka.No.104246/Va.pa/A3/2019 dated 27.01.2020 directed the third respondent to consider the claim of the petitioner. Based on the same, the third respondent rejected the petitioner's application for appointing as driver on compassionate ground by order dated 07.09.2021. According to the learned Government Advocate, the petitioner's step mother is currently working as Village Primary Health Centre, Vadavoor, Nagapattinam District and therefore, the claim of the petitioner was rightly rejected by the third



respondent. In this context, the learned Government Advocate relied on the

decision on the Hon'ble Apex Court in the case of **Union of India &**

Another Vs. Shashank Goswami & Another reported in JLJR (2) 2012 102

in paragraph no.9 has held as under:

"9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class / group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. "

5. It is also further submitted by the learned Government Advocate that the petitioner's family has already received a sum of Rs.30,00,000/- towards death cum post retiral benefits, vide No.AG (A & EO/PEN.PO8/ 10823953/2/ PPO No.F0823953 out of which the petitioner has got a share. Therefore,



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taking note of the pecuniary advantage received by the petitioner and in the light of the fact that the petitioner's step mother is already employed in Government Service, it cannot be said that the petitioner is in indigent position warranting appointment on compassionate grounds. Therefore, the learned Government Advocate justified the order passed by the third respondent, which is impugned in this writ petition, and prayed for dismissal of the writ petition.

6. Heard Both sides and the perused the materials available on records.

7. In the instance case, the petitioner submitted an application dated 08.11.2019 to the third respondent seeking to appoint him on compassionate ground for the post of driver. The third respondent, in turn forwarded the application on 15.11.2019 to the second respondent. Subsequently, the second respondent by proceeding dated 27.01.2020 directed the third respondent to consider the petitioner's application based on the Rules and Government Order in force. Thereafter, the third respondent vide order dated 07.09.2021 rejected the petitioner's application on the ground that the deceased employee has got his own RCC roofed house, pension is being paid to the legal heirs besides the petitioner received a portion of the terminal



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benefits paid to the deceased employee to the tune of Rs.7,71,216/-. The third respondent has also relied on the Integrated certificate issued by the Tahsildar, Nagapattinam dated 29.10.2019. It is pertinent to note that the integrated certificate was dated 29.10.2019. The second respondent forwarded the petitioner's application to the third respondent for consideration and subsequently, the third respondent rejected the petitioner's application based on the integrated certificate issued by the Tahsildar. The third respondent also placed reliance on the employment of the petitioner's step mother as Village Nurse to reject the claim of the petitioner.

8. On consideration of the above reasoning, this Court is of the view that the impugned order passed by the third respondent is unsustainable law for the reason that as per GO.(MS).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, the employment of the petitioner's step mother has nothing to do with the claim of the petitioner for appointment on compassionate grounds. The relevant portion of the Government Order reads thus:-

"Clause (iv) of the legal heirs / near relatives of the deceased Government Servant / Person who are eligible for compassionate ground appointment :-

(iv) If any person, in the deceased Government Servant's family was employed even before the death of



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the Government Servant but was living separately without extending any help to the family, then the case of other eligible dependant will be considered.

Clause (ii) and (iii) of the Family to be in indigent circumstances to be eligible under compassionate ground appointment :-

(ii) A family having annual income of less than Rupees 2 lakhs only will be treated to be in indigent circumstances.

(iii) The family pension of the deceased employee and the immovable property like living house of the employee need not be taken into account while assessing the income of the family. However, income received from the movable / immovable properties in the name of the Government Servant's family members should be taken into account. Certificate is to be issued by the jurisdiction Tahsildar. "

9. As per the above Government Order, if any one of the persons is employed in Government service before the death of the employer and is living separately without extending any financial assistance to the family of the deceased employee, then the other legal heirs are eligible for appointment as compassionate ground. Further, the death cum retirement benefits received by the petitioner or the assets standing in the name of the deceased cannot be a ground for the third respondent to reject the claim of the petitioner for appointment on compassionate grounds. Clause 2 of the Government Order clearly stipulates that even though a family of the deceased government servant is in receipt of income of less than Rs.2,00,000/- still such family has



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to be treated as an indigent family without any financial resources. Further,

Clause 3 states that the death cum retirement benefit, family pension or the assets acquired by the deceased government servant prior to his death cannot be taken into account to deny appointment on compassionate grounds.

10. Even though, in the integrated certificate dated 29.10.2019 issued by the Tahsildar it is stated that a RCC roofed house is standing in the name of the deceased Government Servant and that the family of the deceased is in receipt of pension of Rs.7,71,216/- per year, it cannot be a ground for rejection. The petitioner's application for appointment on compassionate ground must be strictly in terms of the above clauses mentioned in GO. (MS). No.18, Labour and Employment (Q1) Department, dated 23.01.2020. On the contrary, the third respondent had assigned strange reasoning and rejected the application of the petitioner.

11. In view of the above facts and circumstances of the case, this Court is of the considered view that the impugned order dated 07.09.2021 in Na.Ka.No.4471/A1/2019 is liable to be quashed and the same is quashed.

12. In the result, this writ petition is allowed and the respondents are directed to appoint the petitioner as Driver or in any other suitable post on



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compassionate ground, on the basis of his educational qualification by considering his applications dated 24.06.2019, 08.11.2019 & on 12.08.2020, 03.04.2021 in the light of the orders issued by the second respondent in proceeding Na.Ka.No.10426/Va. Pa/A3/2019 dated 27.01.2020, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

24.08.2023

Index : Yes / No
Internet : Yes / No

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To

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Health & Family Welfare Department,
Fort St.George, Chennai - 600 009.
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J.SATHYA NARAYANA PRASAD, J.



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