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W.P. No. 32352 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No. 32352 of 2022

S. Kalaivanan

..Petitioner

Vs.

1. The Registrar General,
High Court, Madras,
Chennai – 104.
2. The Principal District Judge,
Vellore –I.
3. The Principal District Munsif,
Ambur.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records made in the impugned order of the 2nd respondent vide Viduvi No. 11991/2021/A, dated 04.12.2021, reaffirming the order passed vide Viduvi No.



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3260/2020A dated 20.03.2020 and quash the same and direct the respondents to provide suitable employment to the petitioner on compassionate ground in the light of the order passed by this Hon'ble Court, rendered in the case of J. Bhuvan Kumar V. The Comissioner, Employment and Training Department & another, W.A. No. 818 of 2013 dated 12.06.2014.

For Petitioner :: Mr.S.N. Ravichandran

For Respondents :: Mr.V. Vijay Shankar

O R D E R

(Made by S. Vaidyanathan,J.)

The present writ petition is filed challenging the order of the 2nd respondent vide Viduvi No. 11991/2021/A, dated 04.12.2021, reaffirming the order passed vide Viduvi No. 3260/2020A dated 20.03.2020 and quash the same and direct the respondents to provide suitable employment to the petitioner on compassionate ground.

2. The case of the petitioner is that his mother, while in service, died on 27.06.2019 and the petitioner made a representation on 08.11.2019



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along with necessary documents to the 2nd respondent through the 3rd respondent requesting for appointment on compassionate grounds.

However, relying upon G.O.Ms. No. 40 Labour and Employment Department dated 05.01.1990 and G.O.Ms.No. 18 Labour and Employment (Q1) Department dated 23.01.2020, the representation of the petitioner was returned by order dated 20.03.2020 on the ground that the petitioner's brother was working as Constable Grade II in Tamil Nadu Special Reserve Police Force. The petitioner's further representation dated 20.10.2021 to the 2nd respondent requesting to re-consider the order dated 20.03.2020 was also returned by the impugned order dated 04.12.2021 for the very same reason. Hence, the present writ petition.

3. According to the petitioner, the Government Orders which were in force on the date of demise of the deceased employee alone will govern the Scheme of Compassionate Appointment. The petitioner would further state that his brother had joined as Grade II Constable in the Police Force even before the death of his mother and was living separately without extending any support to their family. That being so, as per G.O.Ms. No.



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155 Labour and Employment Department dated 16.07.1993, if any person in the deceased Government servant family was employed before the death of the government servant, but if that earning member is not supporting family and living separately, then in that case the other eligible dependant can be considered for compassionate appointment. Though the said Government Order squarely applies to the case of the petitioner, the same has not been considered in the right perspective. Even clause (iv) under the caption “LEGAL HEIRS / NEAR RELATIVES OF THE DECEASED GOVERNMENT SERVANT /PERSON WHO ARE ELIGIBLE FOR COMPASSIONATE GROUND APPOINTMENT” in G.O.Ms. No. 18 dated 23.01.2020, which has been quoted by the 2nd respondent to refuse the claim of the petitioner reiterates what has been stated in G.O.Ms. No.155 dated 16.07.1993. Therefore, according to the petitioner, the impugned orders are not sustainable and his request for compassionate appointment requires to be considered in the light of relevant Government Orders in the right perspective.



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4. The stand of the petitioner has been resisted by the respondents on the ground that there is no indigent circumstance warranting grant of compassionate appointment as there are two persons in the family of the deceased Government Servant namely, Thiru S. Kalaiarasan and Thiru S.Kalaiselvan, brothers of the petitioner, who are employed and earning separately. The counter affidavit filed on behalf of the 2nd respondent also states that the legal heirship certificate dated 20.08.2019 would reveal that at the time of considering the application of the petitioner, the aforesaid two brothers were unmarried and they were living together and that the separation of the said two brothers of the petitioner from the family after rejection of the application is perhaps an afterthought which is pressed into service to claim the benefit of G.O.Ms. No. 155 dated 16.07.1993. Moreover, as per the counter, though the consolidated certificate issued by the Tahsildar, Ambur, shows that the brother of the petitioner, namely, Thiru S. Kalaiarasan is living separately, it does not establish about his looking after or supporting the family and so also, there is no indication about the other brother namely Thiru S. Kalaiselvan. The request of the petitioner has been considered taking into account all relevant Government



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orders and that the petitioner cannot claim compassionate appointment as a matter of right.

5. Since no final orders have been passed on the representation made by the petitioner, the petitioner shall re-present the returned representation together with all necessary documentary evidence available with him to the 2nd respondent and the 2nd respondent is directed to consider the same, taking into account the situation that was prevalent on the date of the representation, besides the relevant Government Orders and Rules, that were applicable on the date of the representation, i.e, on 08.11.2019 and pass appropriate orders, after affording an opportunity of personal hearing to the petitioner, within a period of 2 months from the date of receipt of the representation. In case, the petitioner fails to appear on the dates specified for personal hearing, his absence may be recorded and orders may be passed based on available records. It is also made clear that in case, the petitioner fails to appear on the dates specified, he cannot take a plea that he has not been afforded an opportunity of personal hearing.



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6. The writ petition is disposed of accordingly. No costs.

nv

(S.V.N.J.) (K.R.S.J.)

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To

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