



WP.Nos.14664 & 29751/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.Nos.14664 & 29751/2017 & WMP.Nos.15913, 32094/2017 &
1518/2021

G.Atchaya

... Petitioner in
both Writ Petitions

Versus

- 1.The Registrar
Cooperative Society
No.170, EVR Periyar Road
Natarajan Maaligai,
Chennai.
- 2.The Joint Registrar
Cooperative Society
Nagapattinam, Nagapattinam District.
- 3.The Deputy Registrar
Cooperative Societies
Public Distribution System
Nagapattinam,
Nagapattinam District.

... Respondents in
both Writ Petitions



WP.Nos.14664 & 29751/2017

Prayer in WP.No.14664/2017 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent herein in his proceedings Na.Ka.No.979/2014/PDS dated 04.04.2017 and consequential order Na.Ka.No.979/2014/POVITHIS dated 25.04.2017 and quash the same and direct the 2nd respondent herein to appoint the petitioner in the Cooperative Society on compassionate ground.

Prayer in WP.No.29751/2017 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent herein in his proceedings Na.Ka.No.979/2014/PDS dated 16.06.2017 and quash the same and direct the 2nd respondent herein to appoint the petitioner in the Cooperative Society on compassionate grounds.

For Petitioner in both
Writ Petitions : Mrs.T.Ananthi

For Respondents in both
Writ Petitions : Mr.S.Ravikumar, Spl.GP

COMMON ORDER

- (1) The petitioner in both the writ petitions is the same and she agitates the same relief namely, seeking compassionate appointment as her father died while in service as a Driver in the office of the Deputy



WP.Nos.14664 & 29751/2017

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Registrar, Cooperative Societies, Nagapattinam. There is no dispute raised that the service of the father of the petitioner had been regularised. As stated, he was working as a Driver and unfortunately, died on 09.10.2012. More unfortunately, at the time of his death, the petitioner was less than 18 years of age. That is not her fault that she was of less age. But the respondents, owing to that particular fact that since she was less than 18 years of age, had held she could not be accommodated with any post consequent to the death of her father, though Rules provide that if circumstances prevail, the legal representatives of a deceased Government employee should be accommodated as an employee of the State Government.

- (2) The facts in detail are that the father of the petitioner Mr.Gunaseelan, was working as Driver in the Office of the Deputy Registrar, Cooperative Societies, at Nagapattinam. He died while in service on 09.10.2012. It is admitted that the petitioner was less than 18 years on the date of death of her father. It is found from the records that at the time of death of her father, the petitioner was 16 years and 3 months old. But her mother was quite diligent. She had made an



WP.Nos.14664 & 29751/2017

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application seeking compassionate employment for the petitioner herein by an application dated 18.06.2014. This fact is obtained from the counter affidavit filed by the respondents themselves. The Rules state that any request for compassionate employment should be preferred within a period of three years from the date of death of the employee. This scheme is only to alleviate the extreme hardships which the family of the deceased would be put to particularly, as the death of a Government employee would lead, not only to his death in physical form, but also put the family to economic death. There would be a sudden stop of the monthly income and as a welfare State, every Government has a scheme for providing employment on compassionate basis to the legal representatives who are eligible and who are in such difficult situation, to be provided with an employment commensurate to their age and to their educational qualifications. But the reasons of the respondents herein for rejecting the application of the petitioner even when tendered after she became a major and crossed the age of 18 years, was that at the time of the death of her father, she was less than 18 years of age. This was the reason which



WP.Nos.14664 & 29751/2017

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had been assigned in the order impugned in the writ petition in WP.No.14664/2017. In the Impugned Order, explaining as to why the petitioner could not be accommodated, the respondents have stated by an order dated 04.04.2017 that though the father of the petitioner had died due to heart attack, on that particular date, the petitioner herein was less than 18 years of age. When that particular writ petition was pending, the petitioner appears to have made further representations and the second order came to be passed on 16.06.2017, necessitating filing of the second writ petition in WP.No.29751/2017.

- (3) Once again, the reason given to reject the application of the petitioner was that she had not completed 18 years of age on the date of death of her father. The father had died owing to heart attack and heart attack comes suddenly and strikes swiftly and does not wait for the children or any other legal representative eligible to be appointed, to cross the age of 18 years. The reasons given are straightaway rejected as bereft of any reason or comprehension.



WP.Nos.14664 & 29751/2017

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(4) Since it is admitted by the respondents that the mother of the petitioner herein had given an application on 18.06.2014, within a period of three years from the date of death of her husband, every other application given by the petitioner herein after completion of 18 years, would only be termed as a continuation of the earlier application.

(5) In this case, reference can be made to the judgment reported in **2013 [8] MLJ 190 [P.Sathiarman, Tiruchirappalli District Vs. Secretary to Government, Department of Electricity and Others]**. In a writ appeal in WA.[MD].No.737/2013, consequent to the dismissal of the writ petition in WP [MD].No.13980/2009, a Division Bench at Madurai Bench, had examined an issue with similar circumstances. The appellant therein, had applied for compassionate appointment as his father died when he was a minor. The mother had sent a representation within a period of three years. It was found that she had actually applied within the period of three years and that when the petitioner applied after attaining the age of majority. The Division Bench held that it was a continuation of the earlier application. The



WP.Nos.14664 & 29751/2017

Division Bench had referred to a catena of decisions on this point and
had finally held as follows:-

"12.....After analyzing the above said case laws, it was held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who have then not attained majority and subsequently, applied within three years of their attaining majority, the request could be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond 3 years of death of the father. It is not the case of the respondents that the family of the appellant is not in indigent status as on today.

13.For the foregoing reasons, the order of the learned Single Judge made in W.P.(MD)No.13980 of 2009 dated 13.09.2010 is liable to set aside.



WP.Nos.14664 & 29751/2017

14. Accordingly, this writ appeal is allowed and the order of learned Single Judge dated 13.09.2010 made in W.P.(MD)No.13980 of 2009 is set aside. The appellant herein is directed to produce a Certificate from the competent authority to the effect that his family is in indigent circumstances as on today, within four weeks and submit the same before the third respondent herein along with a copy of this Judgment. On receipt of the same, based on the representation of the appellant dated 22.12.2009, the respondents shall appoint him in any suitable post within two weeks therefrom. No costs."

- (6) The reasons therein would directly apply to the facts of this case.
- (7) One condition laid down by the Division Bench was that the family should be in indigent circumstances and in that writ appeal, the Division Bench had stated that employment should be given provided the appellant therein, produces an Indigent Certificate. In the instant case, the petitioner as well as her mother, had already produced the Indigent Certificate dated 23.08.2023.
- (8) In view of the above observations, the writ petitions stand **allowed** and the Impugned Orders passed by the 2nd respondent are set aside.



WP.Nos.14664 & 29751/2017

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The petitioner may give a fresh representation and enclose a copy of this order and a copy of the Indigent Certificate dated 23.08.2023 and on receipt of such representation and a copy of this order and a copy of the Indigent Certificate, the respondents are directed to provide employment to the petitioner within a period of twelve weeks from the date of receipt of such representation/order/Indigent Certificate. No costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023

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Internet : Yes

To

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C.V.KARTHIKEYAN, J.,



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WP.Nos.14664 & 29751/2017

AP

WP.Nos.14664 & 29751/2017

21.09.2023