



W.A.(MD) No.883 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 16.11.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD) No.883 of 2020
and C.M.P.(MD) No.4846 of 2020

- 1.The Director of Town Panchayat,
Kuralagam,
Chennai – 108.
Presently having Office at
Urban Administration Office Complex,
7th & 8th Floor, MRC Nager,
Chennai – 28.
 - 2.The Assistant Director of Town Panchayat,
Sivagangai Zone,
Sivagangai.
 - 3.The Executive Officer,
Manamadurai Selection Grade Town Panchayat,
Manamadurai,
Sivagangai District.
- ... Appellants/Respondents

-Vs.-

M.Athithyan

... Respondent/Writ Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 08.01.2020 made in W.P.(MD)No.1620 of 2014 on the file of this Court.



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For Appellants : Mr.S.P.Maharajan
Special Government Pleader

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

The order impugned dated 08.01.2020 passed in W.P.(MD)No. 1620 of 2014, granting the relief of appointment on compassionate ground is under challenge in the present Writ Appeal.

2. Learned Special Government Pleader mainly contended that the deceased employee, father of the respondent / writ petitioner, was engaged as a daily wage employee in Manamadurai Selection Grade Town Panchayat. Though a proposal was submitted to regularize the services of daily wage employees, the father of the petitioner died even before grant of regularization of service. Therefore, the legal heir of the deceased daily wage employee is not entitled to avail the benefit of the Scheme of Compassionate Appointment. The Scheme of Compassionate Appointment is available only to the legal heirs of the deceased permanent members of the service.



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3. Notice served to the respondent through Court. However, the respondent has not chosen to appear before this Court.

4. We have considered the reasoning given by the learned Single Judge in para 7, wherein it is stated that the father of the writ petitioner has served more than 16 years in the Panchayat on daily wage basis. The cases of other daily wage employees were considered and their services were regularized and in the case of the father of the respondent a proposal was submitted. Taking note of the fact that the benefit of regularization was extended to other daily wage employees, the learned Single Judge has granted the relief of compassionate appointment to the respondent.

5. No doubt, sudden death of an employee, who may be the bread winner of the family, would result in certain dislocation of the family. However, the Scheme being a concession, cannot be an absolute right. Any misplaced sympathy or discretionary order in the matter of compassionate appointment will result in opening of Pandora's box and by extending the scope of the Scheme it will result in unconstitutionality.



6. The Scheme being a concession, cannot be extended by exercising the powers of judicial review under Article 226 of the Constitution of India. The Scheme is to be implemented strictly in consonance with the terms and conditions stipulated and exercising the powers of judicial review and providing appointment would cause infringement of the right of equal opportunity for public employment to many citizens who are all waiting to secure employment through open competitive process. Therefore, misplaced sympathy in the matter of compassionate appointment would result in serious consequences in the matter of providing equal opportunity in public employment.

7. All public appointments are to be made under the Constitutional Scheme. Scheme of Compassionate Appointment is not a method of appointment contemplated under the Rules. It is a Special Scheme implemented by the Government to mitigate the circumstances arising on account of the sudden death of an employee and to assist and protect the family. That being the scope, efflux of time is also a ground to reject the claim for compassionate appointment. It is brought to our notice that the father of the petitioner had not continued in service after 29.08.2007. More so, on the date of death, he was a daily wage employee



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and not falling within the ambit of the Scheme of Compassionate Appointment and therefore, we are not inclined to confirm the order impugned.

8. Consequently, the order dated 08.01.2020, passed in W.P. (MD) No.1620 of 2014, is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[S.M.S.J.] & [V.L.N.J.]
16.11.2023

NCC :Yes/No
Index :Yes/No
SJ

To

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3.The Executive Officer,
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