



W.P.(MD).No.14355 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.14355 of 2022

and

W.M.P(MD)No.10255 of 2022

P.Rajesh Kumar

... Petitioner

Vs.

1.The Director,
Agriculture Department,
Chepauk,
Chennai-3.

2.The Joint Director,
Agriculture Department,
Dindigul District.

3.The Assistant Director,
Agriculture Department,
Thoppampatti Block,
Dindigul District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned letter issued by the 1st respondent vide letter No.ANiP6/29317/2018, dated 01.09.2020 and quash the same as illegal and consequently direct the respondents to provide suitable appointment on the



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basis of the petitioner's educational qualifications on Compassionate Grounds on account of the death of his father namely Pandiyan within the time stipulated by this Court and for other reliefs.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed to call for the records pertaining to the impugned letter issued by the 1st respondent vide letter No.ANiP6/29317/2018, dated 01.09.2020 and quash the same as illegal and consequently direct the respondents to provide suitable appointment on the basis of the petitioner's educational qualifications on Compassionate Grounds on account of the death of his father namely Pandiyan within the time stipulated by this Court and for other reliefs.

2. The petitioner's father was employed as Assistant Agriculture Officer in the respondents department. While he was in service, he died on 23.11.2007 unexpectedly leaving behind his 2nd wife, namely Kamalam, the petitioner's mother who is the 3rd wife, the petitioner and 2 sisters of the petitioner and also



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a daughter through the 1st wife. On 16.04.2010, the petitioner made a representation to the 1st respondent seeking appointment on compassionate ground along with No Objection Certificate from all the other surviving legal heirs enclosing all the certificates pertaining to his education qualification. However, the application of the petitioner was not considered at the first instance.

3. On 02.05.2017, the 2nd respondent after a period of 7 years from the date of his application, directed the petitioner to produce Integrated Certificate issued by the Tahsildar concerned certifying indigent circumstances and also No Objection Certificate from the other legal heirs afresh and that exercise was also done by the petitioner. Thereafter, on 01.09.2020 the impugned order came to be passed thereby rejecting the petitioner's application seeking compassionate appointment for the reason that the petitioner is the son of 3rd wife of the employee. On that ground, his application came to be rejected. Challenging the same, this writ petition came to be filed.

4. The learned counsel for the petitioner pressed for allowing the writ petition by quashing the impugned order relying upon the order of the Hon'ble Apex Court in *Civil Appeal No. --- of 2022 arising out of SLP(C)No.18571 of*



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2018 (Mukeest Kumar & Another Vs. The Union of India & Others) in which

a similar case was dealt with and the relevant of which is extracted as follows:

“9. While compassionate appointment is an exception to the constitutional guarantee under Article 16, a policy for compassionate appointment must be consistent with the mandate of Articles 14 and 16. That is to say, a policy for compassionate appointment, which has the force of law, must not discriminate on any of the grounds mentioned in Article 16(2), including that of descent. In this regard, ‘descent’ must be understood to encompass the familial origins of a person. Familial origins include the validity of the marriage of the parents of a claimant of compassionate appointment and the claimant’s legitimacy as their child. The policy cannot discriminate against a person only on the ground of descent by classifying children of the deceased employee as legitimate and illegitimate and recognizing only the right of legitimate descendant. Apart from the fact that strict scrutiny would reveal that the classification is suspect, as demonstrated by this Court in *V.R.Tripathi*, it will instantly fall foul of the constitutional prohibition of discrimination on the ground of descent. Such a policy is violative of Article 16(2).”

5. On the basis of the observation made by the Hon’ble Apex Court, this Court is of the considered view that the impugned order, dated 01.09.2020 has been passed with much callousness after a period of 10 years from the date of



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application of the petitioner and moreover, the reason stated in the impugned order for rejecting the application of the petitioner for compassionate appointment is that he is the son of the 3rd wife of the employee. The Hon'ble Apex Court has made it clear that though compassionate appointment is an exception to the constitutional guarantee under Article 16, a policy for compassionate appointment must be consistent with the mandate of Articles 14 and 16 and it must not discriminate any one on any of the grounds including that of *descent*. However, this Court is keen to observe that this impugned order is a clear case of discrimination in rejection on the ground of *descent* and that is not permissible. The learned counsel for the petitioner relied on yet another judgment of the Hon'ble Supreme Court in ***Civil Appeal No.12015 of 2018 (Union of India & Another Vs. V.R.Tripathi)*** which was decided in the same line.

6. Per contra, the learned Special Government Pleader vehemently contended that the writ petition ought to be dismissed on the basis of the fact that the petitioner is not a legitimate son of the employee and moreover, the marriage between the petitioner's mother and his father is a void marriage and in terms of Section 16(5) of the Hindu Marriage Act, the petitioner is not



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entitled for compassionate appointment since the concept of compassionate appointment cannot be covered under the term “property”.

7. Heard Mr.J.Lawrance, learned counsel for the petitioner and Mr.N.Muthuvijayan, learned Special Government Pleader for the respondents.

8. In fine, this Court is inclined to reject the said contention made by the learned Special Government Pleader and to quash the impugned order passed by the 1st respondent, dated 01.09.2020 and consequently, direct the respondents to provide suitable appointment on the basis of the petitioner’s educational qualification on compassionate ground on the ground of death of the petitioner’s father, namely K.Pandian. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. With the above said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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L.VICTORIA GOWRI, J.

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