



W.P.(MD).No.22257 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.22257 of 2022

and

W.M.P(MD)No.16435 of 2022

G.Mariammal

... Petitioner

Vs.

1.The District Collector,
Tirunelveli,
Tirunelveli District.

2.The District Collector,
Tenkasi,
Tenkasi District.

3.The Joint Director of Ex-servicemen Welfare,
No.22, Raja Muthiah Salai,
Chennai – 600 003.

4.The Assistant Director of Ex-servicemen Welfare,
Military Lines,
Tirunelveli – 627 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the order passed by the second respondent in reference No.COLR/661-2022/A2 dated 13.08.2022 and quash the same and consequently directing the respondents 1 to 4 to provide the petitioner the post of Junior Assistant taking into account the date of



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death of her husband, her seniority in the compassionate appointment dairy and her educational qualification, at par with her juniors who were given compassionate appointment as Junior Assistant overlooking the seniority of the petitioner, with retrospective effect from the date of joining of her juniors, in a time bound manner.

For Petitioner : Mr.K.Alagarsamy
For Respondents : Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the second respondent, dated 13.08.2022 and consequently directing the respondents 1 to 4 to provide the petitioner the post of Junior Assistant taking into account the date of death of her husband, her seniority in the compassionate appointment dairy and her educational qualification, at par with her juniors who were given compassionate appointment as Junior Assistant overlooking the seniority of the petitioner, with retrospective effect from the date of joining of her juniors, in a time bound manner.



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2.Heard Mr.K.Alagarsamy, learned counsel appearing for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondents and perused the materials available on record.

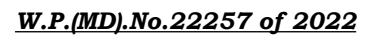
3.The petitioner's husband was working as a Sepoy in the Indian Army and he died in service on 28.07.2013. Within a period of three years, on 23.05.2016, the petitioner made an application seeking appointment on compassionate ground to the first respondent. There is a scheme for providing compassionate appointment in the State of Tamil Nadu for dependents of defense personnel who died in harness in any one of the Government Departments in Group "C" and "D" posts to facilitate the purpose of giving compassionate appointment. For the said purpose, separate diaries are maintained in the office of the District Collectors and appointments are being provided taking into account the date of death of defense personnel, seniority in the compassionate appointment diary and educational qualification of the dependent applicant. Such a diary is also maintained at the office of the District Collector, Tirunelveli ie., the first respondent. The petitioner's application for compassionate



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appointment, dated 23.05.2016 was duly received in the office of the first respondent and the petitioner's name was registered as No.2 in the said diary. However, the offer of compassionate appointment was not forthcoming from the first respondent for several years and the petitioner was compelled to make several repeated representations to the various authorities including the Hon'ble Chief Minister of Tamil Nadu to provide with compassionate appointment considering her indigent circumstances and condition of living. Finally, on 21.10.2019, she was summoned to appear before the fourth respondent. When she appeared, she was informed that there was no vacancy for the post of Junior Assistant in Tirunelveli District and vacancies for the post of Record Clerk alone were available and left with no other option, the petitioner accepted the post of Record Clerk. The petitioner was duly appointed on 16.12.2021 by the second respondent.

4.While so, the District of Tirunelveli was bifurcated with effect from 22.11.2019, thereby the new District of Tenkasi was created and the process of giving compassionate appointment to the dependents of the defense personnel who died in harness commenced from the aforesaid Districts as well. Fully misguided by the first respondent's office, the petitioner without any option had given an



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the availability of vacancies to the post of Junior Assistant during the period between 2019 and 2022.

5.Since the juniors in the appointment diary were provided with the post of Junior Assistant, overlooking the seniority of the petitioner, she made a representation on 04.05.2022 to the second respondent to appoint her in the post of Junior Assistant. The said representation was not considered and hence, the petitioner filed a Writ Petition in W.P(MD)No.12054 of 2022 before this Court and this Court by order dated 16.06.2022, directed the first respondent therein to consider the petitioner's representation, dated 04.05.202, within a period of three months. Pursuant to the same, the impugned order dated 13.08.2022 came to be passed by the second respondent rejecting the claim of the petitioner seeking appointment of the petitioner in the post of Junior Assistant. Challenging the same, this Writ Petition came to be filed.

6.The fourth respondent has filed a counter-affidavit and the learned Special Government Pleader appearing for the respondents vehemently submitted that the petitioner's husband died in harness on 28.07.2013 and the petitioner applied for appointment in the



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Government service on compassionate grounds on 23.05.2016. The appointments on compassionate ground with respect to the legal heirs of the defense personnel who died in harness were made on the basis of a diary maintained in the office of the District Collector of the concerned District. The petitioner applied for compassionate appointment vide her application dated 23.05.2016 to the District Collector, Tirunelveli and her name was registered in the office of the District Collector, Tirunelveli and she was placed in the second rank. However, pursuant to the bifurcation of Tirunelveli District into the Districts of Tirunelveli and Tenkasi in the year 2019, the petitioner's area of living was demarcated within the jurisdiction of the District of Tenkasi and as a result of which, her application was forwarded to the bifurcated District. That apart, there had been no vacancy in the post of Junior Assistant at the time when the petitioner's application seeking compassionate appointment, dated 23.05.2016 was considered by the second respondent. In addition to that, the petitioner had given an undertaking that she will never ever claim the post of Junior Assistant in future either personally to the respondent concerned or before any Court of law and only on the basis of the said undertaking, the petitioner had been accommodated in the post of Record Clerk and hence, the petitioner is no more entitled to claim the post of Junior



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Assistant and on that basis, he pressed for dismissal of the Writ Petition.

7.The matter in hand is no more res integra and this Court in the case in W.P.No.15057 of 2011, dated 14.03.2022 has clearly dealt with a similar case and had passed favourable orders to the petitioner thereat and the relevant portion of which is extracted as follows:-

"3. The case of the petitioner is that when he was initially appointed on compassionate grounds on 16.06.1986, he was entitled to be appointed to the post of Junior Assistant and therefore, he would be entitled to be regularized with effect from 16.06.1986 onwards.

4. The learned Additional Government Pleader placed reliance on the counter affidavit and submitted that, at the time of his original compassionate appointment, there were no vacancies to the post of Junior Assistant and therefore, the petitioner could not be accommodated in the post of Junior Assistant. Since he was promoted to the post of Junior Assistant on 05.12.1997, his services came to be regularized from that date onwards.



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5. *The impugned order is liable to be quashed, on the ground that it is contrary to the Government Orders in G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989, as well as G.O.Ms.No.1179, Personnel and Administrative Reforms Department, dated 17.10.1979. As per G.O.Ms.No.1499, a dependent, appointed to a lower post on compassionate grounds, but possesses the qualification required for the post of Junior Assistant at the time of his initial appointment to a lower post, may be appointed as a Junior Assistant/Typist. This concession is allowed only to those who have been appointed to any lower post like that of the petitioner herein, who was appointed as a Mazdoor. It is further stated in the Government Order that the appointing authority, in no circumstances, should appoint a dependent to a lower post, when the dependent possesses the qualification required to the post of Junior Assistant, on the ground of non-availability of vacancy in the office or department or the dependents not willing to work in other departments. In these circumstances, the procedure contemplated under G.O.Ms.No.1179 dated 17.10.1979 requires to be followed.*

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9. This apart, the respondents contend that the petitioner would not be entitled for regularization from the date of his initial appointment is that, on the date of the petitioner's original appointment, there were no vacancies. However, such a statement seems to be in contradiction to the counter affidavit filed by the third respondent herein dated 29.11.2021. As per paragraph 6 of the counter, out of the 13 vacancies allotted by the Tamil Nadu Public Service Commission, 9 Junior Assistants were appointed upto 13.04.1986 and one Junior Assistant was appointed on 09.06.1986. Apparently, 3 posts of Junior Assistants were available on the date when the petitioner was appointed on compassionate grounds and he was also fully qualified to hold the post of Junior Assistant. Hence, the statement that there were no vacancies as on the date when the petitioner was appointed, seems to be factually incorrect.

10. In the light of the above observations and findings, the impugned order passed by the third respondent dated 23.09.2005 is quashed. Consequently, there shall be a direction to the first respondent to pass appropriate orders, granting notional promotion to the petitioner to the post of Junior Assistant with effect from 16.06.1986 and regularize his services from 16.06.1986 onwards, together with all consequential service and monetary benefits."



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8.That apart, the learned counsel appearing for the petitioner drew my attention to the Government Order in G.O.Ms.No. 1499, Labour and Employment (Q1) Department, dated 03.08.1989, which has also been discussed in the Writ Petition referred supra, which mandates that the appointing authorities under no circumstances should appoint a dependent to a lower post when the dependent possesses the qualifications required for the post of Junior Assistant/Typist on the ground of non-availability of vacancy in the office or Department or the dependents not willing to work in other Departments. In such circumstances, they should follow the existing procedure of approaching the Collector of the District for providing a suitable vacancy, as suggested in G.O.Ms.No.1179, P & AR Department, dated 17.10.1979.

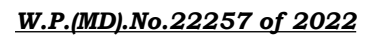
9.The learned counsel appearing for the petitioner further submitted that no where the regulations with respect to the appointment on compassionate ground mandates the respondents to get any undertaking that they will not claim the right of being appointed in a higher post at the time of appointment.



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10. In view of the facts and circumstances of this case, no doubt the petitioner had made an application seeking compassionate appointment within a period of three years from the date of death of the employee and she possessed the minimum educational qualification for the post of Junior Assistant and it is also brought to my notice that only because of the penury which she suffered due to the death of her husband, she was forced to give an undertaking that she will not claim the post of Junior Assistant in future atleast for the sake of securing any post. However, when the petitioner came to know that few juniors maintained in the diary for compassionate appointment on the file of the respondents have been provided with the post of Junior Assistant in the same year of 2021, in which the petitioner was also given with an appointment order, dated 16.12.2021, she had rightly made a representation to the second respondent to provide her with an appointment in the post of Junior Assistant on par with her juniors in the diary maintained in the second respondent/District Collector, Tenkasi.

11. That apart, the information received by the petitioner under the Right to Information Act, dated 31.05.2023 from the Public Information Officer/Assistant Commissioner – 4, Chepauk, Chennai,



12. On that basis, this Court is able to precisely come to a conclusion that the petitioner had been arbitrarily and discriminatively treated by the respondents in providing with an appointment on an arbitrary ground.

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Commissioner of Revenue Administration Disaster Management, but by the Assistant Director of Ex-Servicemen Welfare office. This Court is inclined to observe that before filing a counter-affidavit before this Court, the fourth respondent ought to have verified with the statistics available in the office of the second respondent and duly file an appropriate counter-affidavit since the said exercise has not been done, this Court comes heavily condemning the incorrect and false statements made by the fourth respondent.

14. In view of the same, this Court hereby quash the impugned order, dated 13.08.2022 passed by the second respondent and subsequently direct the second respondent to appoint the petitioner in the post of Junior Assistant taking into account her seniority in the compassionate appointment diary and her educational qualification at par with her juniors, who were given compassionate appointment as Junior Assistant overlooking the seniority of the petitioner with retrospective effect from the date of joining of her juniors, within a period of eight weeks from the date of receipt of a copy of this order.



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15. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes
Index : Yes
Internet : Yes
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To

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Tirunelveli District.
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L.VICTORIA GOWRI, J.

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