



W.P.(MD).No.13251 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.13251 of 2017
and
W.M.P.(MD).No.10320 of 2017**

S.Ramesh

... Petitioner

Vs.

1.The Secretary to Government,
Public Service Employment Department,
Secretariat,
St.Fort George,
Chennai.

2.The Commissioner of Revenue Administration,
Ezhilagam,
Chennai.

3.The District Collector,
Tirunelveli,
Tirunelveli 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 on the file of the third respondent pertaining to its order bearing Na.Ka.No.A7/4286/2017 dated 22.02.2017 and to quash the same and



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consequently direct the respondents to appoint the petitioner as Junior Assistant from the date of appointments as Office Assistant that is from 14.04.2012 by considering the request of the petitioner dated 29.12.2016.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader.

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus to quash the order dated 22.02.2017 and consequently direct the respondents to appoint the petitioner as Junior Assistant from the date of appointment as Office Assistant that is from 14.04.2012 by considering the request of the petitioner dated 29.12.2016.

2. The petitioner's father was working as a Revenue Assistant in Nanguneri Taluk (Civil Supply Section). While in service, he died on 11.12.2005. On 06.02.2006, the petitioner's mother who was not in a position to take care of the family made an application for appointment on compassionate ground. At the time of death of the petitioner's father, the petitioner was minor and he was studying 10th Standard. During the year 2008,



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the petitioner completed 12th standard and he made an application for compassionate appointment. Thereafter, by order dated 10.04.2012, the petitioner was appointed as Office Assistant at Ambasamuthiram Taluk Office to assist the Revenue Inspector, Cheranmahadevi. The contention of the petitioner is that based on his qualification, he is eligible to be appointed in a higher post than the Junior Assistant. Even though there are several vacancies for the post of Junior Assistant, the respondents failed to consider the petitioner. The petitioner joined the post of Office Assistant for which the qualification is only 8th pass. Therefore, on 29.12.2016, the petitioner submitted an application to grant the said Junior Assistant post and also requested to grant all monetary benefits in pursuance to the same. In similar circumstances, one Vanaja who has completed 10th standard was considered and posted as Junior Assistant. The third respondent without considering the same, by proceedings dated 22.02.2017 rejected the petitioner's request stating that as per G.O.Ms.No.560 dated 03.08.1997 and the clarification dated 21.07.2011, the petitioner is not entitled to consider for any higher post. Aggrieved over the same, the petitioner is before this Court.



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WEB COP 3. The respondents have filed a counter stating that the Government Order in G.O.Ms.No.1499, Labour and Employment Department, dated 03.08.1989 will not be applicable to the petitioner. Subsequently, several Government Orders are passed whereby the earlier Government Orders were superseded. As on date, G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020 is applicable to the petitioner. In the said Government Order, it has been specifically stated that the earlier Government Orders are superseded. Hence, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.S.C.Herold Singh, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondents.

5. The learned Additional Government Pleader relied on the judgment rendered by the learned Single Judge in W.P.(MD)No.22166 of 2022 dated 29.11.2022, wherein the learned Single Judge has relied on the Hon'ble Division Bench judgment in W.A.No.317 of 2014, dated 22.09.2017. The relevant portion is extracted hereunder:



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*“4. At this juncture, it is to be noted that appointment on compassionate ground is based upon rules and regulations governing the same. **In other words, the appellant cannot seek as a matter of right, that he should be appointed in a particular post.** Admittedly, the post of Record Clerk was vacant at the relevant point of time and the appellant was appointed to the said post. Having voluntarily accepted such appointment, the appellant is estopped from making a higher claim without any legal basis. Merely because others have been given the benefit of appointment to other post, the appellant cannot claim the same as a matter of right. In such view of the matter, the stand taken by the learned counsel for the appellant cuts no ice with us. Accordingly, the writ appeal is dismissed. However, it is made clear that the dismissal of this writ appeal will not stand in the way of the respondents in taking appropriate steps, in accordance with law, as indicated in the order dated 04.06.2007 impugned in the writ petition.”*

6. This Court is also of the same opinion that the person seeking compassionate appointment cannot seek as a matter of right, that he should be appointed in a particular post. It is pertinent to note that the compassionate appointment can be granted only in the last grade service, since from the post of Junior Assistant it has to be recruited through TNPSC. Therefore, such post cannot be granted, inspite of the petitioner's higher qualification. Therefore, the claim of the petitioner cannot be entertained.



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7. With the above observations, this Writ Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

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S.SRIMATHY, J.

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