



W.P.No.5302 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM:

THE HON'BLE Mr. JUSTICE G.K. ILANTHIRAIYAN

W.P.No.5302 of 2020

R.Gunasekar

... Petitioner

vs.

- 1.The Principal Secretary to Government,
Revenue and Disaster Management Department,
St.George Fort,
Secretariat,
Chennai – 600 009.
- 2.The Additional Chief Secretary,
Revenue and Disaster Management Department,
St.George Fort,
Secretariat,
Chennai – 600 009.
- 3.The Additional Chief Secretary/Commissioner
of Revenue Administration and Disaster Management,
Chepauk,
Chennai – 600 005.
- 4.The District Collector,
Previously Vellore District,
Presently Ranipet District,
Ranipet.
- 5.The Tahsildar,
Walajah Taluk Office,
Ranipet District.

... Respondents



W.P.No.5302 of 2020

Writ Petition filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to proceedings dated 17.09.2019 issued in Government Letter No.16600/Work-9(1)2019-1 confirming the proceedings of 3rd respondent issued in Proceeding No.1C4/20295/2014, dated 24.12.2018 and quash the same and consequently direct the respondents to revise the petitioner's appointment to the post of Junior Assistant from the date of appointment of “Masalchi” (Sweeper), w.e.f. from 24.02.2016 with back wages and all other monetary benefits, within the time to be stipulated by this Court.

For Petitioner	: Mr.T.Vedi
For Respondents	: Mr.Balamurugan Government Advocate

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 17.09.2019, thereby confirming the order passed by the 3rd respondent, by proceedings dated 24.12.2018, rejecting the appeal filed by the petitioner to appoint him in the post of Junior Assistant.

2. The learned counsel appearing for the petitioner submitted that the petitioner's father died on 14.02.2005, while he was in service as Village Administrative Officer. At that juncture, the petitioner was studying 7th standard and the application submitted by his mother seeking compassionate appointment was kept pending. However, after attaining the age of majority,



W.P.No.5302 of 2020

the petitioner requested to consider his application for compassionate appointment and he was appointed as Masalchi (Sweeper) in the office of the 5th respondent on 24.02.2016. After three years, the petitioner submitted an application to appoint him in the post of Junior Assistant by considering his educational qualification, which was rejected by the 3rd respondent *vide* proceedings dated 24.12.2018 and the same was also confirmed by the 1st respondent, by proceedings dated 17.09.2019, challenging which, the petitioner is before this Court.

3. The learned Government Advocate appearing for the respondents submitted that the petitioner accepted the order of appointment and joined in the post of Masalchi (Sweeper) on 24.02.2016 and after having been regularised in the said post, he preferred an appeal before the 3rd respondent and the same was rejected, which was also affirmed by the 2nd respondent. That apart, as per G.O.Ms.No.155, Labour and Employment (Q-1) Department dated 10.12.2014, the applicants who sought appointment under compassionate ground between 23.08.2005 and 03.05.2010 may be considered even if they have not attained 18 years of age, if they fulfil the other qualification and they should have attained the age of 18 years on the date of appointment and the petitioner was studying only 7th standard on the date of original application seeking compassionate



W.P.No.5302 of 2020

appointment which was submitted within the prescribed time limit of 3 years and therefore, he is entitled to get appointment in commensurate with his qualification. Accordingly, the petitioner was appointed as Masalchi as per the Government Order in force.

4. Heard both sides and perused the materials placed on record.

5. The petitioner's father died on 14.02.2005. The petitioner's mother made an application seeking compassionate appointment for the petitioner on 13.09.2005. At that point of time, the petitioner, who was aged 12 years, was pursuing his VII standard. Thus, since the petitioner had not attained the age of majority, the application for compassionate appointment was kept pending pursuant to the request made by the petitioner's mother *vide* application dated 13.09.2005, *supra*. Further, since the petitioner had not completed even X standard, he was directed by the fourth respondent/Collector *vide* proceedings dated 27.09.2005, to renew his application after completing X standard. Thereafter, the petitioner, on completion of XII standard, submitted his application on 08.07.2011, during which period also, he had not attained the age of majority. These facts are not controverted.



W.P.No.5302 of 2020

6. At this juncture, it is worth dilating on paragraph 6 of G.O. (Ms.) No.155, *supra*. As per the said paragraph, the applicants who have sought appointment under compassionate ground between 23.08.2005 and 03.05.2010, may be considered even if they had not attained the age of majority, provided they fulfil other qualifications and attained the age of majority on the date of appointment. Admittedly, as adverted to above, in the instant case, the petitioner's mother had submitted the application seeking compassionate appointment to the petitioner on 13.09.2005, which date falls during the period stipulated in G.O.(Ms.)No.155, *supra*. The petitioner completed his X standard in 2009 and Plus Two in 2011 and thereafter, he addressed a representation on 08.07.2011 after a lapse of six years from the date of his father's demise, i.e., 2005.

7. The aforesaid delay cannot be countenanced in the light of the scheme of compassionate appointment, the object of which is to provide immediate succour to the family of the Government servant who died in harness. But, in ground D of his affidavit, the petitioner takes shelter under the proceedings dated 27.09.2005 of the fourth respondent/Collector, by which he was directed to submit a representation after completing X standard. At this juncture, at the cost of verbosity, relevant portion of Ground D is worthy of



W.P.No.5302 of 2020

reproduction:

WEB COPY

“D. The 4th respondent, *vide* letter dated 27.09.2005, acceded to the request wherein directed to submit representation after completion of SSLC. In pursuant to the same, the petitioner had submitted an application dated 11.11.2013 requesting for appointment as a 'Junior Assistant' on compassionate grounds and at that time, the petitioner has completed B.A. (English). Hence, the petitioner is eligible for appointment to the post of 'Junior Assistant' on compassionate grounds, but the same was not considered.”

8. When, admittedly, the petitioner had completed his X standard in 2009, at his sweet will and pleasure, he cannot submit representation seeking compassionate appointment in 2011 after completing his Plus Two course. When the petitioner relies on the communication dated 27.09.2005 of the fourth respondent/Collector to contend that he was directed to give a representation after completing his X standard, this Court is unable to comprehend what made him wait till he completed his Plus Two course in 2011, instead of giving a representation in 2009 soon after completing X standard. If the stand of the petitioner that since he has completed under graduation, he has to be offered a post in commensurate to his qualification, *viz.*, Junior Assistant, is to be accepted, then, at a later point of time, he may even further qualify and seek another post in commensurate to the higher qualification subsequently acquired by him, which, if accepted, will only be very much against the scheme governing appointment on compassionate ground. To be noted, appointment on compassionate ground is not a source of employment, but, as stated earlier, it is



W.P.No.5302 of 2020

only a benevolent scheme aimed at providing immediate succour to the family of the Government servant who had died in harness.

9. At this juncture, it will not be out of place to advert to a Full Bench judgment of this Court in ***Nandini Dev vs. The Secretary to Government, Health & Family Welfare Department [W.P. (MD) Nos.7016 of 2011 etc. batch (decided on 11.03.2020)***, wherein, while answering a reference, the Full Bench, after referring to various judgments of the Supreme Court governing the field of compassionate appointment, held unequivocally, *inter alia*, that appointment on compassionate basis has to be strictly followed in accordance with the relevant Government Orders of the scheme that has been framed by the employer and any deviation from the scheme is not permissible.

10. In the case on hand, based on the qualification possessed by him on the date of the first application, *viz.*, 13.09.2005, the petitioner was offered the post of Masalchi in commensurate with his qualification, *viz.*, VII standard, in sync with G.O.(Ms).No.155, *supra* and the rules *qua* compassionate appointment.

11. In view of the above discussion, this Court is of the view that the appellate authority has rightly rejected the petitioner's appeal *vide* the first



W.P.No.5302 of 2020

impugned proceedings dated 24.12.2018, which has been correctly confirmed by the revisional authority *vide* the second impugned proceedings dated 17.09.2019.

In the result, this writ petition is dismissed as being devoid of merits.

No costs.

27.08.2024

gya

Index: Yes/No

Internet: Yes/No



W.P.No.5302 of 2020

To

WEB COPY

1. The Principal Secretary to Government,
Revenue and Disaster Management Department,
St. George Fort,
Secretariat,
Chennai – 600 009.
2. The Additional Chief Secretary,
Revenue and Disaster Management Department,
St. George Fort,
Secretariat,
Chennai – 600 009.
3. The Additional Chief Secretary/
Commissioner of Revenue Administration and
Disaster Management,
Chepauk,
Chennai – 600 005.
4. The District Collector,
Previously Vellore District,
Presently Ranipet District,
Ranipet.
5. The Tahsildar,
Walajah Taluk Office,
Ranipet District.



WEB COPY



W.P.No.5302 of 2020

G.K. ILANTHIRAIYAN, J.

gya

W.P.No.5302 of 2020

27.08.2024