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W.P.No.30269 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.30269 of 2013

V.Asodhai

....Petitioner

Vs

1. The Registrar of Co-operative Societies,
Office of Registrar of Co-operative Societies
N.V.Natarajan Building,
No.170, Periyar Ee.Ve.ra. Salai,
Kilpauk, Chennai -10.
2. The Joint Registrar of Co-operative Societies,
Cuddalore Zone, Cuddalore.
3. The Deputy Registrar of Co-operative Societies,
Virudhachalam Division,
Cuddalore District.
4. The President,
E.1477 – Pennadam Co-operative Stores Ltd,
Pennadam PACB Commercial Campus,
Manthope Street, Tittagudi Taluk,
Cuddalore District.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records pertaining to impugned order of 3rd respondent in Na.Ka. No.613/2012/Tho.Ve.Sa, dated 30.08.2012 and quash the same as illegal, unfair, arbitrary, against service jurisprudence and settled principles of law and further direct the respondents to regularise service of petitioner's



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deceased husband (late) Mr.R.Veerapandian and provide employment on compassionate ground based on her application dated 09.11.2009.

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For Petitioner : Mr.R.Veeramani
For R1 to R3 : Mr.T.M.Rajangam
Government Advocate
For R4 : Mr.L.P.Shanmugasundaram

ORDER

This Writ Petition is filed challenging the order dated 30.08.2012 in so far as rejecting the claim of the petitioner seeking compassionate appointment of her son and for further direction to regularize the appointment of the petitioner's husband.

2. It is the case of the petitioner that her husband Late Mr.Veerapandian had joined the Cooperative Societies as Packer on daily wage basis on 01.04.1994. Thereafter, by a proceedings dated 21.08.2008, her husband was brought under the time scale of pay for the post of Packer with effect from 01.08.2008 and he was paid Basic Pay and other allowances and therefore he had earned all required qualifications for conferring the status of a permanent workman. While so, when the proposal submitted by the 4th respondent for regularizing the service of the petitioner's husband was pending, he died in harness on 18.02.009. Pursuant to the death of her husband, she made a representation for compassionate



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appointment for her elder son on 09.11.2009. As the application was kept pending, she was representing to the higher authorities but ultimately the application of the petitioner seeking compassionate appointment came to be rejected by an order dated 30.08.2012. Assailing the said order, petitioner has preferred the present petition.

3. The learned counsel for the petitioner by placing reliance on the recommendations made by the Special Officer to the effect that the petitioners husband was eligible to continue his service as Packer and while his regularization proposals were pending and since prior to the regularization petitioner's husband died, naturally she is entitled to make an application seeking compassionate appointment for her elder son as her family was under distress situation due to the sudden demise of her husband.

4. The learned counsel further contended that earlier by a proceedings dated 28.09.2011, a communication was sent that there was no vacancy and as and when there are suitable vacancy, application of the petitioner will be considered. However, since she made a complaint before the CM cell, the respondent by an order dated 30.08.2012 rejected the application seeking compassionate ground only on the ground that, since the appointment of the petitioner's husband was an irregular appointment, the legal heirs of the



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irregularly appointed employees are not entitled to be appointed under the compassionate scheme.

5. The learned counsel further by placing reliance on the decisions of this Hon'ble Court in the case of Special Commissioner Vs. K.J.Kumaravel reported in 2016 SCC Online Mad 17467, Tamil Nadu State Transport Corporation (Kumbakonam Division -I) Ltd Vs. Lalitha reported in 2005 (2) CTC 246 and S.Gandhimathi Vs. Dy. Registrar of Co-operative Societies reported in 2003 (3) L.L.N 743 contended that, once the employee was eligible for regularization and pending regularization if the employee dies, the legal heirs are entitled to seek compassionate appointment.

6. The learned counsel for the petitioner also contended that, even though proposals were submitted by the Special Officer long back, the service of the petitioner's husband has not been regularized and hence he sought for allowing the writ petition.

7. Per contra, the learned Government Advocate appearing for the respondents by relying on the averments in counter affidavit submitted that, the petitioner's husband did not possess the necessary educational qualification for the post of Packer and he was also overaged at the time of



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appointment and therefore his appointment itself is an irregular appointment and the application submitted by the petitioner seeking compassionate appointment for her son has been rightly rejected by the authorities.

8. The learned Government Advocate also by producing the proceedings of the 1st respondent dated 21.08.2008 contended that, employees who are irregularly appointed even though brought under time scale of pay are not entitled for regularization and they will continue to be treated as “Irregular Employees”. As the service of petitioner's husband was an irregular appointment, the petitioner is not entitled to seek compassionate appointment for his son and thus, he sought for dismissal of the Writ Petition.

9. Heard the rival submissions and perused the materials available on record.

10. Admittedly, the petitioner's husband was appointed under the respondent Society in the post of 'Packer'. Though the service of the petitioner's husband was brought under the time scale of pay in the post of Packer with effect from 01.08.2008, as per the proceedings issued by the Registrar dated 21.08.2008, even though the employees are brought under



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the time scale of pay, if their initial appointment is irregular, they will continue to be treated as “Irregular Employee” and they will not be entitled to claim regularization. In the present case, from the materials placed on record, it could be seen that, though the Special Officer by proceedings dated 24.11.2009 has passed a resolution in the Society that since the petitioner's husband who had died on 18.02.2009 remains vacant it has been resolved that, petitioner's son may also be considered for appointment on compassionate ground, but however no further proceedings has been initiated by the Society. The services of the petitioners husband has not been regularized and he continued to be treated as irregular employee. As such the application of the petitioner son seeking compassionate appointment for her son came to be rejected.

11. In so far as the scheme of the Compassionate Appointment is concerned, only considering the penurious circumstances of the family due to the sudden death of the employee, appointment on compassion grounds is considered. The application of the legal heirs of the deceased employees are to be dealt with under the Scheme of compassionate appointment and only if the application filed by the legal heirs of the deceased employee are in consonance of the scheme, then alone it can be considered and it is not a vested right for the legal heirs of the deceased employees to seek



employment on the compassionate grounds.

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12. The Hon'ble Supreme Court in the decision in State of Madhya Pradesh and Others v. Amit Shrivastava reported in 2020 (10) SCC 496, had an occasion to deal with the distinction between work charged, permanent and regular employees, wherein the Hon'ble Apex Court has observed as follows:

“15. In our opinion, the only issue which has to be examined is whether the late father of the respondent who admittedly was employed as a work-charged/contingency employee in the Tribal Welfare Department was entitled to the compassionate appointment as per the existing policy on the date of his demise.

16. It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succour to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively. In so far as providing succour is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succour to the family immediately does not survive. We have still examined the matter in the conspectus of the applicable policy. It is not in question that the Policy prevailing was one dated 18-8-2008. Clause 12.1 clearly proscribes work-charged/contingency fund and daily wage employees from compassionate appointment. The gravamen of the submission of the respondent is based on the classification of his late father as a permanent employee on account of having worked for more than 15 years and the consequent regularisation of his service.



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17. *In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work-charged employee and it is nobody's case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and krammonati. This will, however, not ipso facto give him the status of a regular employee.*”

13. Further the Hon’ble Supreme Court in the decision in Bhawani Prasad Sankar vs. Union of India and Others reported in 2011 (3) LLN 37 (SC), has held as follows:

“(i) Compassionate employment cannot be made in the absence of Rules or Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the Scheme.

(ii) ...

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.”

14. Further the Hon’ble Supreme Court in the case of State of



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Himachal Pradesh and another versus Prakash Chand, reported in 2019 (4)

SCC 285, held as follows,

“10. In exercise of judicial review under Article 226 of the Constitution, it was not open to high Court to rewrite the terms of the Policy. It is well settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the state lays down policy of offering employment assistance to member of the family of a deceased government employee.”

15. In the present case, as it could be seen that though the petitioners husband was appointed as 'Packer' and as he was not having necessary qualification, even though he has been brought under time scale of pay, his employment has been only considered as irregular appointment. As per the compassionate appointment scheme, the legal heirs of the irregular employees cannot be considered under the scheme. The impugned order rejecting the application of the petitioner seeking compassionate appointment for her son, has been passed only on the basis that since her husband was irregularly appointed and as per the scheme of compassionate appointment, her application cannot be accepted. In such circumstances, when the scheme does not provide for offering employment on compassionate grounds for the irregular employees and the services of the employee has not been regularised, this Court does not find any error or infirmity in the impugned order passed by the respondent. In such



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circumstances the claim of the petitioner is rejected.

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16. However this order will not preclude the respondents from considering the services of the petitioners husband for the purpose of grant of any other benefits if otherwise entitled to. The petitioner will also be at liberty to submit a representation if any benefits are due from the society, with in 2 weeks from the date of receipt of copy of this order and if any such representation is received the 3rd respondent shall consider it and pass orders on merits in accordance to law within a period of eight weeks from the date of receipt of such representation.

17. With the above observations and directions, this Writ Petition is disposed of. No costs.

27.08.2024

Index : Yes/No
Neutral Citation : Yes
Speaking order : Yes
Sma

To
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No.170, Periyar Ee.Ve.ra. Salai,
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Pennadam PACB Commercial Campus,
Manthope Street, Tittagudi Taluk,
Cuddalore District.
4. The Regional Manager,
Tamil Nadu Handloom Weavers'
Co-operative Society Ltd., (Co-optex)
No.343, Iind Floor, Bazar Street,
Salem – 636 001.

G.ARUL MURUGAN, J
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