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W.P.No.3455 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.3455 of 2016

P.Murugan

... Petitioner

Vs.

1.The Director of Town Panchayat
Kuralagam,
Chennai-600 104

2.The Assistant Director of Town Panchayat,
Thanjavur Region,
Thanjavur

3.The Executive Officer,
Velankanni Town Panchayat,
Velankanni,
Nagapattinam District.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 1st respondent in Na.Ka.No.11814/ 2015/A9 dated 12.11.2015 and quash the same and consequently direct the respondents to appoint the petitioner to the post of Junior Assistant in the available vacancy.



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For Petitioner : M/s.Prem Narayan

For Respondents : M/s.Akila Rajendran, Govt. Advocate
[for R1 & R2]

: M/s.R.S.Selvam for Mr.Raja Perumal
[for R3]

ORDER

The above writ petition has been filed challenging the order passed by the 1st respondent dated 12.11.2015 in and by which the petitioner's claim for appointment as a Junior Assistant on compassionate grounds in accordance with the guidelines issued in G.O.Ms.No.206, Administration & Water Supply (Town Panchayat-1) Department dated 02.11.1995 was rejected.

2. The only claim that is made in the above writ petition is that the petitioner is entitled to be considered for the post of Junior Assistant on a compassionate ground in the light of G.O.Ms.No.206, Administration & Water Supply (Town Panchayat-1) Department dated 02.11.1995.



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3. The above Government Order had set out that the legal heirs of a deceased employee who had worked as a Record Clerk, Office Assistant and Night Watchman in the Town Panchayats can be considered for compassionate appointment as a Junior Assistant if he/she possessed the required educational qualification. The petitioner's case is that the same concession has to be given to him. He would refer to the similar case of one C.Munusamy who had been initially appointed as a Sanitary Worker on compassionate ground and thereafter appointed as a Junior Assistant after getting the concurrence of the Tamil Nadu Public Service Commission.

4. The petitioner has been appointed as a Sanitary Worker on 15.03.2007 at Velankanni Town Panchayat on a compassionate ground on the death of his father, late Packirisamy, who was also working as a Sanitary Worker in the same Town Panchayat. The petitioner would submit that since he had the requisite educational qualifications to be appointed as a Junior Assistant, he had made several representations to the respondents to appoint him to the post of Junior Assistant on a compassionate ground. However, there was no



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response from the respondents. Aggrieved by the same, the petitioner had filed W.P.No.28346 of 2015, praying to issue a Writ of Mandamus directing the 1st respondent to consider his case for appointment to the post of Junior Assistant on compassionate grounds in accordance with the guidelines issued in GO.Ms.No.206, Administration & Water Supply (Town Panchayat-1) Department dated 02.11.1995. By an order dated 15.06.2011, this Court had directed the 1st respondent to pass appropriate orders within a period of 8 weeks.

5. Thereafter, the 1st respondent had passed the impugned order rejecting the claim of the petitioner. Challenging the same, the petitioner is before this Court.

6. The 1st respondent has filed a counter inter alia denying the claim of the petitioner. They would also submit that the petitioner's father was working as Sanitary Worker (Non provincialised Establishment) in the office of the Executive Officer Town Panchayat, Velankanni and it was to this post that the petitioner had made an



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application and was granted a compassionate appointment. The petitioner had not applied for the post of Junior Assistant. The 1st respondent would submit that the request made by the petitioner has been properly considered and rejected.

7. The 1st respondent would submit that GO.Ms.No.206, Administration & Water Supply (Town Panchayat-1) Department dated 02.11.1995 would not apply to Sanitary Workers and was restricted only to the legal heirs of Record Clerk, Office Assistant and Night Watchman and therefore there is no possibility to revisit the order. That apart, they would submit that Sanitary Worker comes under the Non provincialised Establishment.

8. The 1st respondent would further submit that the petitioner had joined the services of the respondents in the year 2007 at the time of entry he had only applied to be appointed as a Sanitary Worker and had not sought for an appointment as a Junior Assistant, though he claims to have qualified for the post of Junior Assistant. Even on the date of his making his application, the 1st respondent would submit



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that GO.Ms.No.206, Administration & Water Supply (Town Panchayat-1) Department dated 02.11.1995 did not include the case of Sanitary Workers. Therefore, the petitioner cannot claim the benefits of the said Government Order.

9. The 1st respondent would submit that compassionate appointment is not a matter of right. The petitioner has also completed his probation in the cadre of Sanitary Worker and at this stage he cannot seek compassionate appointment as a Junior Assistant.

10. The 2nd respondent has filed a counter inter alia contending that the petitioner cannot rely upon GO.Ms.No.206, Administration & Water Supply (Town Panchayat-1) Department dated 02.11.1995 as the same does not apply to him. The 2nd respondent would also submit that if the petitioner had wanted to be appointed as a Junior Assistant he ought to have made an application for the said post and not for the post of Sanitary Worker, the post in which his father had died. Since the petitioner's father had worked in a non provincialised post and expired while in the services of the 3rd respondent, the



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petitioner was entitled to compassionate appointment only to the same post i.e; Sanitary Worker. They would also reiterate that GO.Ms.No.206, Administration & Water Supply (Town Panchayat-1) Department dated 02.11.1995 have no applications to the petitioner who was holding the post of the Sanitary Worker since the same related only to the legal heirs of the deceased employees holding a post of Record Clerk, Office Assistant and Night Watchman. Therefore, they had sought for the dismissal of the same.

11. The learned counsel appearing on behalf of the petitioner would rely upon the judgement of this Court in W.P.No.16759 of 2015, wherein the learned Judge while referring to GO.Ms.No.206, Administration & Water Supply (Town Panchayat-1) Department dated 02.11.1995 had held that the posts mentioned in the said Government Order viz; Night Watchman, Office Assistant, Record Clerk are only indicative in nature and that does not preclude the Government from adding other lower posts. This order was taken up on challenge by the respondents therein to a Division Bench in W.A.Nos.778 and 779 of 2017. The Division Bench also confirmed



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the order passed by the learned Single Judge. He would therefore submit that this Court should follow the said judgement and allow the writ petition.

12. Per contra, the learned Government Advocate would rely upon the judgement of the Division Bench of this Court in W.A.(MD).No.1280 of 2019, wherein the learned Judge has come down heavily on the scheme of compassionate appointment being misused. He would also draw the attention of the Court to another Division Bench judgement in WA.No.1767 of 2019 where I was part of the Bench and once again the same view had been taken and the request of the appellant therein for appointment as Junior Assistant was rejected.

13. Heard the counsels.

14. The petitioner admittedly has been taken into the rolls of the respondents under a compassionate appointment scheme when his father had died. The Government Order that the petitioner relies on is



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of the year 1995. The petitioner had applied to be appointed as a Sanitary Worker in the same Town Panchayat where his father had worked. He had not requested to be appointed as a Junior Assistant at that stage. Now, the petitioner seeks yet another compassionate appointment to the post of Junior Assistant without going through the normal channel and seeks to have a back-door entry. As held by the Division Bench in WA(Md).No.1280 of 2019 compassionate appointment is a concession and it does not confer an absolute right upon any person. Since it is a special scheme, the terms and conditions for such appointment has to be scrupulously followed. The Bench had ultimately rejected the request for appointment as Junior Assistant.

15. In the other Division Bench judgement which has been relied upon by the respondent in WA.No.1767 of 2019, the Bench had once again reiterated this position which reads as follows:-

"There is absolutely no basis in the claim made by the appellant. There is no vested right to the appellant to claim employment in a post of his choice. The



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Scheme framed by the Government indicates the posts reserved for compassionate appointment. The Government has been making appointments only to the lower level posts. The fact that the appellant is over qualified would not give him a right to claim a superior post. The compassionate appointment given to the appellant itself was a concession. The learned single Judge considered all these vital aspects and the writ petition was rightly dismissed."

16. By entering the services of the respondents, on compassionate grounds, the petitioner has already exhausted the concession available to him. He cannot now once again seeks to be appointed as a Junior Assistant on a compassionate ground. It is well open to him to participate in the process of recruitment when vacancies of Junior Assistant would arise. Further, the judgement that has been relied upon by the petitioner has been stayed by the Hon'ble Supreme Court.

17. In these circumstances, I see no reason to interfere with the



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impugned order passed by the 1st respondent. Consequently, the Writ

Petition stands dismissed. No costs.

15.07.2024

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

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