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W.A.No.2166 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.2166 of 2022

and

C.M.P.No.16143 of 2022

C.Kasi

... Appellant

Vs.

1.The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai - 9.

2.The Director of Town Panchayat,
Kuralagam Buildings,
Chennai - 108.

3.The Assistant Director of Town Panchaat,
Vellore District.

4.The Executive Officer,
Vilapakkam First Grade Town Panchayat,
Vilapakkam, Vellore District.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 11.03.2022 passed by the learned Judge in W.P.No.5556 of 2022.



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For Appellant : Mr.P.I.Thirumoorthy
For Respondents : Mr.Silambanan
Additional Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal is directed against the order dated 11.03.2022 passed by the learned Judge in W.P.No.5556 of 2022.

2. The brief facts of the case are as follows:

2.1. The appellant's husband by name Chakravarthi, was initially engaged as NMR Sweeper on 01.10.1984, and after rendering 14 years of service, he was appointed as consolidated pay sweeper with effect from 01.01.1998 in terms of G.O.Ms.No.199, MAWSS Department, dated 12.08.1997, as per which, an employee on completion of three years of consolidated pay service, would be brought under regular time scale of pay. Accordingly, the appellant's husband was entitled to regular time scale of pay with effect from 01.01.2001 onwards. However, the same was not done by the authorities immediately. In the mean while, the appellant's husband died on 27.03.2001. Consequently, the appellant made representations dated 31.01.2002 and 01.04.2002 enclosing all the required documents, to the fourth respondent



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requesting for settlement of monetary benefits and for compassionate appointment to her son Panchanathan. However, the said request was rejected, by order dated 17.05.2002 of the third respondent, on the ground that legal heir of the deceased consolidated pay employee was not entitled to compassionate appointment and retirement benefits.

2.2. Thereafter, the appellant preferred W.P.No.11948 of 2014, seeking a direction to the respondent authorities to bring the services of her deceased husband under the regular time scale of pay from the date on which he completed three years in the consolidated pay service, and direct the fourth respondent to consider her claim for compassionate appointment to her son Panchanathan. During the pendency of the same, MP.No.1 of 2015 came to be filed in the said writ petition, seeking amendment of the prayer by substituting her another son Sankar, instead of Panchanathan, stating that since the appellant's younger son Panchanathan was already working in Education department and living separately, the appellant sought compassionate appointment to another son Sankar. The said writ petition came to be disposed of along with a batch of cases, on 01.09.2015, by directing the authorities to bring the consolidated pay employees under regular time scale from the date on which they completed three years of consolidated pay service. However, no order was passed in the amendment petition. Therefore, the appellant preferred review application, which was dismissed as withdrawn with liberty to file a fresh writ



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petition. Pursuant to the same, the appellant filed the writ petition in WP.No.5556 of 2022, seeking a direction to the respondents 1 and 2 to consider and pass final order on the proposal of the fourth respondent dated 17.05.2017 within the stipulated time, by incorporating the appellant's son viz., Sankar, instead of Panchanathan. The learned Judge, relying on the judgment of the Apex Court in *State of Madhya Pradesh & Others Vs. Amit Shrivastava* [Civil Appeal No.8564 of 2015, dated 29.09.2020], dismissed the writ petition, by order dated 11.03.2022.

The relevant passage of the said order is quoted below for ready reference:

"4. The legal issue has already been decided by the Hon'ble Supreme Court of India in Civil Appeal No.8564 of 2015 between State of Madhya Pradesh & Others Vs. Amit Shrivastava dated 29.09.2020, wherein, it is held as follows:

"15. Insofar as providing succor is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succor 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 18.08.2008. Clause 12.1 clearly proscribes work charge/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 regularization of his service.

16. 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 permanent employee on account of having completed 15 years of service, which 2 State of Gujarat & Ors. V. Arvindkumar T.Tiwari & Anr., (2012) 9 SCC 545 entitled him to certain benefits including



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pension and Krammonati. This will , however, not ipso facto give him the status of a regular employee.

17. In the aforesaid behalf, an analogy can be drawn with the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963, under which employees can be classified as permanent, permanent seasonal, probationers, badlis, apprentices, temporary and fixed-term employment employees. A work-charged contingency employee can also be classified under any of the aforementioned categories and under the said Standing Orders, the classification as permanent can be granted even on the completion of 6 months service in a clear vacancy.

.....

21. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a 'permanent' status and a 'regular' status appears to have been lost sight of in the impugned judgments."

5. In the light of the above said decision of the Hon-ble Supreme Court of India, the relief sought for by the petitioner in the present writ petition cannot be considered and the same is liable to be dismissed.

6. Accordingly, this writ petition stands dismissed. No costs."

2.3. The aforesaid order passed by the learned Judge is questioned in this appeal, at the instance of the writ petitioner.

3. The learned counsel for the appellant would submit that the appellant's husband is entitled for regular time scale of pay from the date on which he completed three years consolidated pay service in terms of G.O.Ms.No.142 MAWSS Department and he was brought under consolidated pay service on 31.12.1997 and hence, he was entitled for regular time scale with effect from 01.01.2001 onwards. Accordingly, a Division Bench of this court in its final order



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dated 01.09.2015 in WP. No. 11948 of 2014, had directed the respondents to bring the appellant under regular time scale from the date on which he completed 3 years satisfactory consolidated pay service. However, no order was passed in the amendment petition seeking to include the appellant's elder son Sankar instead of younger son Panchanathan. Therefore, the appellant preferred Review application SR No.15468/2017, which was dismissed as withdrawn with liberty to file a fresh writ petition. Pursuant to the same, the appellant preferred the present writ petition, which was dismissed by the learned Judge, without properly appreciating the facts and circumstances of the case.

4. Continuing further, the learned counsel for the appellant submitted that the learned Judge failed to consider that since the final order was passed by the Division Bench on 01.09.2015 without passing separate order in the amendment petition, in order to implement the Bench Order, necessary proposal dated 17.05.2017 was sent by the fourth respondent to the second respondent seeking permission to bring the services of the deceased appellant's husband under regular time scale on completion of 3 years consolidated pay service (01.01.2001) and consequently, to consider the appellant's claim for compassionate appointment to her younger son Panchanathan and the same was pending before the first respondent. It is also submitted that as per the order of the Division Bench, the appellant's husband's service was directed to be regularised with



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effect from 01.01.2001 and therefore, he should not be considered as consolidated pay employee as on his date of death i.e., on 27.03.2001. However, the learned Judge erred in dismissing the writ petition filed by the appellant herein, by the order impugned herein, which will have to be set aside by this court.

5. *Per contra*, the learned Additional Advocate General appearing for the respondents would submit that in pursuance to the direction issued in W.P.No.11948 of 2014, dated 01.09.2015, the service of the appellant's husband was regularized with effect from 01.01.2001, and arrears of pay for the period from 01.01.2001 to 27.03.2001, totaling Rs.5,726/-, were paid on 03.11.2022. However, the request for compassionate appointment was rejected as C.Panchanathan had already secured a government job as Night Watchman in A.A.Government Higher Secondary School, Vilapakkam. The learned Additional Advocate General further contends that one of the family members of the appellant is in government service, and her request for compassionate appointment for another son, namely C.Sankar, by proposing an alternative candidate, while the original applicant is alive, cannot be considered and therefore, the same was rightly rejected by the respondent authorities, in accordance with the new guidelines framed by the Government in G.O.Ms.No.18 P&AR (Q) Department, dated 23.01.2020. Thus, according to the learned



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Additional Advocate General, the order of the learned Judge affirming the rejection order passed by the authorities, does not require any interference by this court.

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

7. The facts remain undisputed are that the appellant's husband was appointed in the post of Sweeper on consolidated pay and he joined duty on 01.01.1998; and that, he died on 27.03.2001, while he was in service. Pursuant to the order of the Division Bench dated 01.09.2015 in WP.Nos.688/2015 etc. cases, the service of the appellant's husband was regularised with effect from 01.01.2001 and the monetary benefits due to him, were also paid to the appellant. It is also not in dispute that after the death of her husband, within the period of three years, the appellant made application seeking compassionate appointment to her son Panchanathan, who already secured Government job as Night Watchman through employment exchange. While so, the appellant made a request to the respondent authorities to provide employment on compassionate grounds to another son Sankar, instead of Panchanathan. In this regard, the fourth respondent sent a proposal dated 17.05.2017 to the second respondent, however, nothing progressed. Therefore, the appellant preferred the writ



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petition, seeking a direction to pass orders on the said proposal and provide compassionate appointment to her son Sankar, instead Panchanathan, but the said writ petition was dismissed by the learned Judge, by the order impugned herein.

8. It is the grievance of the appellant that the service of her husband was regularised as per the order of the Division Bench dated 01.09.2015, and hence, the order of the learned Judge rejecting the claim of the appellant seeking compassionate appointment to her son Sankar, treating her husband as consolidated pay employee, is incorrect and contrary to law.

9. The claim of the appellant was resisted on the side of the respondent authorities stating that the original application seeking compassionate appointment to the appellant's son Panchanathan was rejected, since he had already got Government job; and that, the alternative application filed by the appellant seeking compassionate appointment to another son Sankar, cannot be considered, in view of the ruling that any alternate application shall be accepted only in the case of death of original applicant.

10. The position of law is that the compassionate appointment can be made only in accordance with the scheme and there is no right to claim any



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appointment *de hors* the scheme. It is also well settled that the hardship of the dependant does not entitle one to compassionate appointment *de hors* the scheme or the statutory provisions as the case may be. In the present case, the respondent authorities placing reliance on G.O.Ms.No.18 P&AR (Q) Department, dated 23.01.2020, rejected the alternative application filed by the appellant seeking compassionate appointment to her son Sankar instead of Panchanathan. It is clearly stated in the said G.O. that if the applicant (legal heir of deceased Government servant) died after applying for compassionate ground appointment, an alternative application may be accepted from the other legal heir of the deceased Government servant, subject to conditions prescribed for compassionate ground appointment. Admittedly, the original applicant viz., Panchanathan is alive and has already secured Government job through employment exchange. Therefore, the alternative application submitted by the appellant seeking compassionate appointment to another son Sankar, instead of Panchanathan, does not eligible for favourable consideration, according to the prevailing Government Order and is thus, liable to be rejected. Accordingly, the respondent authorities have rightly not considered the claim of the appellant.

11. In such view of the matter, the order passed by the learned Judge, dismissing the writ petition, on different ground, cannot be interfered with by this court. Accordingly, the writ appeal deserves to be dismissed as devoid of merits.



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12. At this juncture, the learned counsel for the appellant sought liberty to the appellant to approach the respondent authorities with a fresh representation for appropriate relief, in terms of Rule 17 of the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023, which was notified by G.O.(Ms.)No.33 Labour Welfare and Skill Development (Q1) Department, dated 08.03.2023.

13. Granting such liberty to the appellant, this writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
31.01.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

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2.The Director of Town Panchayat,
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