



W.P.No.27139 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.27139 of 2021 and
W.M.P.No.28615 of 2021

M.Anantha Babu

... Petitioner

Vs.

1. The District Collector,
Salem District,
Salem.

2. The Revenue Divisional Officer,
Salem District,
Salem.

3. The Tahsildar,
Gangavalli Taluk,
Salem District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of impugned order in Na.Ka.No.7082/2016/A5, dated 19.03.2021 passed by the 1st Respondent and quash the same and consequently to direct the 1st respondent to appoint the petitioner on compassionate appointment.



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For Petitioners : Mr.P.Ganesan for
Mr.S.Satheeshkumar

For Respondents : Mr.S.Rajesh
Government Advocate

ORDER

This Writ Petition is filed to quash the proceedings passed by the 1st Respondent in Na.Ka.No.7082/2016/A5, dated 19.03.2021 and consequently direct the 1st respondent to appoint the petitioner on compassionate appointment.

2. The petitioner's father namely Maruthai was working as a Village Assistant in Pagadapadi Village and he died on 21.12.2007 while he was in service. Subsequently, the petitioner being the son of the deceased, had applied for compassionate appointment and the same was rejected on the ground that the petitioner is an illegitimate son of the deceased employee who was born through the second wife when his first wife was alive. Hence, this Writ Petition.



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3. Mr.P.Ganesan, learned counsel for the petitioner submitted that as per Hindu Succession Act, even the child born through void marriage be considered as a legitimate child and hence, the respondents may be directed to reconsider the petitioner's application.

4. The learned counsel drew the attention of this Court to Section 45 (5) (iii) of the Tamil Nadu Pension Rules, 1978 which says that the sons including step sons, adopted sons born through illegitimate wife are entitled to get Death-cum-Retirement Gratuity of the deceased Government Servant and hence a different yard stick cannot be adopted in respect of compassionate appointment.

5. The petitioner has applied for compassionate appointment on 14.03.2008, but he was directed to resubmit the same with necessary documents. Thereafter, the petitioner submitted all the documents along with a fresh representation dated 24.11.2008 and the same was not considered. The petitioner again made a representation on 29.02.2016 seeking compassionate appointment. However, on 19.03.2021 the 1st



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respondent has passed an order by rejecting the petitioner's claim by stating that the deceased father had married the petitioner's mother as a second wife while the first wife of the employee was alive.

6. In the impugned order, it is stated that as per Government letter No.34, Labour and Employment (QI) Department dated 16.04.2002, the children born out of void marriages are entitled for family pension and Death-cum-Retirement and not for Compassionate ground appointment.

7. In a similar circumstance, the Hon'ble Supreme Court in ***Union of India and Ors. Vrs. V.K.Tripathi reported in (2019) 14 SCC 646***, has held that a child of a second wife of an employee could not be denied for compassionate appointment on that ground alone and the said Judgment was followed in subsequent Judgments of the Hon'ble Supreme Court viz., in ***Mukesh Kumar and Ors. Vs. the Union of India (UOI) and Ors.*** reported in ***MANU/SC/0232/2022***. The relevant portions are extracted hereunder:

"14. The real issue in the present case, however, is whether the condition which has been imposed by the circular of the Railway Board



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under which compassionate appointment cannot be granted to the children born from a second marriage of a deceased employee (except where the marriage was permitted by the administration taking into account personal law, etc.) accords with basic notions of fairness and equal treatment, so as to be consistent with Article 14 of the Constitution....

16. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe, the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

8. In the present case on hand, the petitioner is the son of the second wife and as held by the Hon'ble Supreme Court, the legitimate children



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born out of void marriage has been recognised by law itself. Hence, the 1st respondent's order dismissing the application of the petitioner is liable to be set aside.

9. In the result, this Writ Petition is allowed. The order passed by the 1st Respondent in Na.Ka.No.7082/2016/A5, dated 19.03.2021 is quashed. The respondents are directed to reconsider the case of the petitioner by scrutinizing the application submitted by the petitioner in respect of other requirements and pass appropriate orders on its own merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

13.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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