



W.P.(MD)No.5942 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.5942 of 2024 &
W.M.P.(MD)No.5597 of 2024

R.Ramkumar

... Petitioner

VS.

1.The Secretary to Government,
Government of Tamil Nadu,
Department of Revenue and Disaster Management,
Chief Secretariat, Fort St.George, Chennai - 600 009.

2.The District Collector,
Karur District, Karur.

3.The Revenue Divisional Officer,
Avarakurichi,
Karur District.

4.The Tahsildar,
O/o.the Tahsildar,
Avarakurichi Taluk,
Karur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order of the 4th respondent dated 25.01.2018 in Na.Ka. A2/2054/2012 and quash the same and consequently direct the



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respondents to appoint the petitioner in any other suitable post on compassionate grounds.

For Petitioner : Mr.V.Muthu Kamatchi
For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

Heard Mr.V.Muthu Kamatchi, learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents.

2. The petitioner has filed this petition seeking to quash the impugned order of the fourth respondent dated 25.01.2018 in Na.Ka. A2/2054/2012 and direct the respondents to appoint him in any other suitable post on compassionate grounds.

3. The petitioner's father who worked as a Village Administrative Officer died on 07.05.2012 while in service. Subsequently, the petitioner's mother has made an application to the



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respondents on several occasions seeking appointment on compassionate grounds on behalf of the petitioner. However, the same was rejected on the ground that the petitioner is the son born out of an invalid marriage.

4. The law is well settled in respect of the status of the children born out of invalid marriage, that they should also be considered as legitimate. Hence, the petitioner is very much a legal heir of his father and it is wrong on the part of the fourth respondent to reject the application for appointment on compassionate grounds on the ground that the petitioner was born out of invalid marriage. Since the impugned order has been passed solely on the said ground, it is liable to be set aside.

5. In this regard, it is worthwhile to refer the Judgment of Full Bench of the Supreme Court held in ***Mukesh Kumar and Another vs. Union of India and Others reported in 2022 II LLJ 1 (SC)***, wherein, it is held as under.

"6. It is true that the matter is no more res integra. This Court in V.R. Tripathi considered the very same policy and circular that arise for the consideration in



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the present case. The judgment covers the issue, as is evident from the following passages:

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



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17. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination.

18. ... The exclusion of one class of legitimate children from seeking compassionate appointment merely on the ground that the mother of the applicant was a plural wife of the deceased employee would fail to meet



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the test of a reasonable nexus with the object sought to be achieved. It would be offensive to and defeat the whole object of ensuring the dignity of the family of a deceased employee who has died in harness. It brings about unconstitutional discrimination between one class of legitimate beneficiaries — legitimate children.”

7. This Court held that the scheme and the rules of compassionate appointment cannot violate the mandate of [Article 14](#) of the Constitution. Once [Section 16](#) of the Hindu Marriage Act regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would violate [Article 14](#) if the policy or rule excludes such a child from seeking the benefit of compassionate appointment. The circular creates two categories between one class, and it has no nexus to the objects sought to be achieved. Once the law has deemed them legitimate, it would be impermissible to exclude them from being considered under the policy. Exclusion of one class of legitimate children would fail to meet the test of nexus with the object, and it would defeat the purpose of ensuring the dignity of the family of the deceased employee. This judgment has now been followed by a number of High Courts as well.

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11. Given the above, we hold that the issue arising for consideration, in this case, is covered by the judgment of this Court in [Union of India and Ors. v. V.K. Tripathi](#) and consequently the judgment and order dated 18.01.2018 of the High Court of Judicature at Patna passed in CWJC No. 18153 of 2017 is set aside. As we have held that appellant No.1, Shri Manish Kumar, cannot be denied consideration under the scheme of compassionate appointments only because he is the son of the second wife, there shall be a direction to consider his case as



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per the extant policy. The Authorities shall be entitled to scrutinize whether the application for compassionate appointment fulfils all other requirements in accordance with the law. The process of consideration of the application shall be completed within a period of three months from today."

6. In the above Judgment, it is clearly held that a child cannot be denied consideration under the Scheme for appointment on compassionate grounds only because, he / she is the child of the second wife. Therefore, the present petitioner could not also be deprived of consideration for the appointment on compassionate grounds.

7. Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents submitted that the application has been filed beyond a period of three years and it was also one of the reasons for the rejection of application.

8. However, the said reason has not been stated in the impugned order. Furthermore, delay alone cannot be the reason for rejection of application for appointment on compassionate grounds. Hence, I feel is



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appropriate to set aside the impugned order and direct the fourth respondent to consider the issue afresh and pass appropriate orders.

9. In view of the above observations, the writ petition is **disposed of** and the impugned order of the fourth respondent dated 25.01.2018 in Na.Ka. A2/2054/2012 is set aside. The fourth respondent is directed to consider the issue afresh in a holistic manner and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

12.06.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order
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To

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Department of Revenue and Disaster Management,
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O/o.the Tahsildar,
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R.N.MANJULA, J.

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