



W.P.(MD).No.6695 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.6695 of 2023

and

W.M.P.(MD)No.6327 of 2023

Lenin Prabhu

...Petitioner

Vs

The Managing Director,
Tamil Nadu Medical Services,
Corporation Limited,
No.417, Pantheon Road,
Egmore,
Chennai – 600 008.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned orders passed by the respondent in his proceedings Ref.No.14397/2017 dated 24.08.2017 and the consequential order in Na.Ka.No.14397/2017 dated 29.12.2021 and quash the same as illegal and consequently direct the respondent to consider the petitioner's case for compassionate appointment.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.Shivakumar and Suresh



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WEB COPY

ORDER

Heard Mr.T.Lenin Kumar, learned counsel for the petitioner and Mr.Shivakumar and Suresh, learned counsel for the respondent.

2. The petitioner, who is the son of the deceased namely, C.Mohan, is aggrieved due to the order of sole respondent rejecting the application of the petitioner seeking for compassionate appointment and has filed this Writ Petition seeking to quash the rejection orders dated 24.08.2017 and 29.12.2021 and with a consequential direction to the respondent to consider him under the scheme of compassionate appointment.

3. Mr.T.Lenin Kumar, learned counsel for the petitioner submitted that the petitioner's father who was working as Pharmacist under the respondent Corporation from 01.11.1995, died on 27.07.2015 while in harness. Thereafter, the petitioner's mother made an application for appointment on compassionate ground. Since no response was evoked thereof, the petitioner has submitted the application dated 15.06.2017 through proper channel. The said application was rejected for the reason that the petitioner's deceased father was absorbed in the Corporation



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temporarily and hence the applicant is not entitled for employment under compassionate grounds.

4. However, the learned counsel for the petitioner submitted that even the temporary workers will also be included in the scheme in view of the latest Government Order in G.O.Ms.No.33 dated 08.03.2023. Relevant paragraph of the said Government Order is extracted hereunder:

LABOUR WELFARE AND SKILL DEVELOPMENT (Q1) DEPARTMENT

G.O.Ms.No.33

Dated: 08.03.2023

.....

3. Eligibility for appointment.-

.....(4) *For removal of doubts, it is hereby clarified that,*

(a) employment on casual, adhoc or contract basis, on daily wages or consolidated pay, of any member of the family of a deceased or medically invalidated Government servant, is not a bar for the family to apply for appointment under these rules;

.....

5. The learned counsel for the petitioner drew the attention of this Court to the earlier decision rendered in ***S.Gandhimathi v. The Deputy Registrar of Cooperative Society and others*** reported in ***2003 Writ L.R.***



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deceased shall be deemed to have been regularised, in view of his long service. Relevant portion of the said judgment is extracted as under:

“14. By applying the rule of fiction the deceased is deemed to have been regularised. In terms of The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, the deceased ceased to be a casual and deemed to be a regular employee with permanent status on his completing 480 days and on the date of death he was a permanent employee and therefore his son for whose benefit the writ petition has been filed is entitled to be considered for appointment on compassionate ground. The contention that the deceased always remained a casual labourer as no orders have been passed even though proposal was sent for regularisation cannot be sustained.”

6. In the instant case, the petitioner's father is said to have been working in the respondent Corporation on temporary capacity from the year 1995 till his death 27.07.2015 for nearly 20 years. Hence, for the petitioner's case, beside the aforesaid Government Order which includes the persons like petitioner also under the scheme, the rule of fiction can also be employed. As per the rule of fiction, the person who has put 15 years of service during his life time has got every possibility to get his service regularized. In the instant case, the petitioner claims that his father was appointed in the year 1995 and he died during the year 2015



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applied and it can be presumed that the petitioner's father would have been regularized, had he lived.

7. Taking into account of the long services of the petitioner's father and by applying the Rule of Fiction, I feel that a suitable direction can be given to the respondent to reconsider the petitioner's application.

8. In view of the above stated reasons and also in the light of the judgment held in *S.Gandhimathi's case(cited supra)*, this Writ Petition is **allowed** and the impugned orders passed by the respondent dated 24.08.2017 and 29.12.2021, are set aside and the respondent is directed to reconsider the application of the petitioner and pass orders afresh 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.

13.06.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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Nsr

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