



W.A(MD) No.155 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.A(MD) No.155 of 2019
and
C.M.P (MD) No.1198 of 2019**

- 1.The Director General of Police,
The Office of the Director General of Police,
Chennai.
 - 2.The Superintendent of Police,
The Office of the Superintendent of Police,
Trichy District.
 - 3.The Commissioner of Police,
The Office of the Commissioner of Police,
Trichy City, Subramaniyapuram,
Trichy District.
 - 4.The Superintendent of Police,
The Special Police Force,
The Office of the I Battalion,
Trichy – 12.
- ... Appellants/Respondents

-VS-

Selvi S.Agni Mahalakshmi ... Respondent/Petitioner

Prayer: Writ Appeals filed under Clause 15 of Letters Patent, to set aside
the order passed in W.P. (MD) No.3553 of 2013 dated 17.09.2014.



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For Appellants : Mr.N.Ramesh Arumugam
Government Advocate

For Respondent : Mr.P.V.Vetrivel
for Mr.S.Rajasekar

J U D G M E N T

The respondents 1 to 4 in W.P. (MD) No.3553 of 2013, aggrieved by the order dated 17.09.2014 in the writ petition filed by the respondent herein had filed the present Writ Appeal.

2. The writ petition had been filed questioning the order dated 03.01.2013 whereby, the fourth respondent in the writ petition, the Superintendent of Police, the Special Police Force, Office of the I Battalion, Trichy, had rejected a claim of the writ petitioner for appointment on compassionate basis. The said order was passed on the ground that the mother of the writ petitioner was not a regular Government servant.

3. In order to facilitate a better narrative of the facts, we will refer the parties as they were referred in the writ petition. This would indicate that the respondent herein was the writ petitioner and the



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appellants were the respondents in the writ petition.

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4. The father of the writ petitioner was working as Head Constable in Tamil Nadu Police Service.

4.1. The records produced by the learned Government Advocate reflect that he had joined service on 17.01.1986 and was serving in Srirangam Police Station. He died while in service on 16.08.2000.

4.2. Thereafter, the mother of the writ petitioner, S.Anandhi applied for employment on compassionate basis. She was appointed by order dated 16.06.2004 in Na.Ka.No.A2/19375/03, passed by the fourth respondent in the writ petition, the Superintendent of Police, the Special Police Force, Office of the I Battalion, Trichy.

4.3. However, since she did not have requisite qualification and had also completed the age of 35 years, she was appointed as a 'Cook' but on temporary basis. If she had completed two years of service as Cook, there would have been every possibility of her being brought



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into regular service.

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4.4. She continued to discharge her service as Cook but unfortunately, in less than 14 months, she died while in service on 02.08.2005. She had therefore not been brought into regular service. That fact had been held against the writ petitioner to deny her employment on compassionate ground.

5. The learned Government Advocate had placed reliance on G.O. (Ms.) No.42, Labour and Employment (Q1) Department, dated 12.03.2007, which provided that employment on compassionate ground shall be made only against actual vacancies and no supernumerary posts shall be created.

6. It has also been provided in Clause 2.7 of G.O. (Ms.) No. 42, that only dependants of regular Government Servants who died in harness shall be given appointment on compassionate grounds. It is also stated that no appointment on compassionate grounds shall be given to dependants of casual or adhoc or temporary Government Servants appointed under Rule 10(a)(i) of the Tamil Nadu State and Subordinate



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Services Rules. This particular ground had been strongly stressed by the learned Government Advocate.

7. We would also extract that particular Clause 2.7 in entirety:-

“Dependants of only regular Government Servants who died in harness shall be given appointment of compassionate grounds. No appointment on compassionate grounds shall be given to dependants of causal or adhoc or temporary Government Servants appointed under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules.”

8. The learned Government advocate placed reliance on the judgment reported in 2016 (4) L.W 769, [The Inspector General of Prisons and another -vs- P.Marimuthu], wherein it had been held that compassionate appointment is only a concession and not a right which can be exercised by a minor on attainment of majority. The Division Bench also placed reliance on the aforementioned Government Order and



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held that the scheme can be extended only to eligible members of the family.

9. It had been stated that the member of the family who is eligible should submit the application within three years from the date of death and if he was a minor aged between 15 to 18 years, he can also submit an application within three years from the date of death or on attaining majority. It had therefore been found on facts of that case that the learned Single Judge in the writ petition granted compassionate appointment to the respondent therein on grounds which are assailable and the Division Bench had interfered with the order of the learned Single Judge and had allowed the Writ Appeal, on the primary ground that, on the date of the application, he was a minor aged about 12 years.

10. The facts in the instant case are certainly distinguishable.

11. The learned Government Advocate also placed reliance on the judgment of the Hon'ble Supreme Court reported in (2011) 13 SCC 42, Local Administration Department and another -vs- M.Selvanayagam Alias Kumaravelu, wherein again, it had been



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observed that compassionate appointment cannot be granted many years after the death of the employee. It had been observed that the object is to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner.

12. It had also been observed that an appointment made many years after the death of the employee or without due consideration of the financial resources available cannot be upheld by the Court. In that particular case, it was found that the first application for compassionate appointment was filed in 1993, when the respondent was a minor and the other after 7 years 6 months of his father's death on attaining majority.

13. It had therefore been held that the family could have tided over the first impact of the death of the employee and therefore, compassionate employment cannot be granted to the dependants of the family.

14. Again the facts are distinguishable, since in the instant case, the reason for rejection was not on the ground of the economic condition of the family but on the ground that the mother of the writ



petitioner was not under regular employment.

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15. The next judgment relied on by the learned Government Advocate is the judgment in *Civil Appeal No.2425 of 2019, [Government of India -vs- P.Venkatesh]*, wherein again, the Hon'ble Supreme Court had held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and only if satisfied that, but for the provision of employment the family will not be able to meet the crisis, could employment to be granted.

16. Again, that was not the ground on which the writ petitioner was denied compassionate appointment in the present case. Therefore, the facts stand distinguishable.

17. On examining the facts of this case, it is clear that the father of the writ petitioner herein was in regular employment of the fourth respondent and was functioning in Srirangam Police Station on and from 17.01.1986 till his death on 16.08.2000. Thereafter, the mother of the writ petitioner was granted employment as a Cook by an order



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dated 16.06.2004 passed by the fourth respondent.

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18. A perusal of such order shows that there had been consideration of the financial circumstances in which the family was placed and very specifically there has been observation about the penury condition of the family. The economic condition was a factor which prevailed upon the fourth respondent to still grant employment, though the mother was aged about 35 years and was not sufficiently qualified. Therefore, they had appointed her as a Cook and not in the police force or in any work relating to the Office of the fourth respondent. Even that appointment was granted only on temporary basis.

19. It is not the case of the respondents that she did not discharge the service to their satisfaction and that even if she had completed two years of service, her service would never had been regularised. Unfortunately, within about thirteen to fourteen months of being appointed, she died on 02.08.2005. Therefore, there was no possibility of her being brought into regular service at all.

20. This case is unique in the sense that death has intervened



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to prevent the mother of the writ petitioner from being brought into regular service. Had her life been extended for a few months more, then she could have been, in all possibility brought into regular service. Had she died later, the writ petitioner would have been granted employment automatically, of course, examining the economic situation in which she had been placed. The respondents herein had not put the economic condition of the writ petitioner as a factor against her. The respondents had placed as the only factor that her mother was not in regular employment. But, the mother was in employment in the first place only in continuation of the father of the writ petitioner, who was in regular employment.

21. It is not the case of the respondents that the mother was a fresh appointee without any reference to anybody else and appointed for the first time on contractual basis as a Cook. She was appointed only because of the service rendered by her husband/father of the writ petitioner. Therefore, the entire issue must be examined only as a continuation of the service of the father and not as a continuation of the service of the mother.



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22. The father of the writ petitioner was in regular employment. He died while in service. Unfortunately, owing to lack of education qualification and her age, the mother was appointed only on temporary basis as Cook. Before she could be regularised, she died. The fact that the mother had no sufficient education itself shows that the family was in economic stress.

23. We hold that G.O. (Ms.) No.42 would not be directly applicable since it speaks only of those who had been appointed for the first time. The service of the father should be first examined and if he had been employed on casual or adhoc or on temporary basis, then the mother of the writ petitioner would never have been offered employment. She died before her service was regularised. We hold that her death could not be a factor to be placed to deny the writ petitioner employment on compassionate grounds.

24. In the affidavit filed in support of the writ petition, the writ petitioner had stated that she was aged about 24 years as on the year 2013 and that she has a younger sister and younger brother who were at



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that particular point of time studying only in School. She had also stated that her relatives and friends alone helped her to study B.Com degree and finally she completed her undergraduation. She stated that even after completion of B.Com degree, she was struggling to lead the family as the eldest daughter, since she had no job.

25. It is therefore seen that she is also in penury circumstances. She has further stated that she supported the family by borrowing debts from others. She is living with her younger sister and younger brother below the poverty line and as the eldest daughter in the family and with both parents dead, she had to take the responsibility to lead the family. There could be no further deserving person than the writ petitioner to be offered compassionate employment taking into consideration the service rendered by her father on regular employment and the death of the mother before her service could be regularised.

26. We are not inclined to accept the grounds raised questioning the judgment of the learned Single Judge. The Writ Appeal stands dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.



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27. We direct the appellants to grant employment to the respondent based on her educational qualification in a suitable post. Such direction has to be complied in accordance with the rules by placing the seniority of the respondent/writ petitioner in the list of those who had applied for compassionate appointment as on date of her application.

28. List the matter on 25.10.2024 under the caption 'for reporting compliance'.

[C.V.K., J.] [J.S.N.P., J.]
22.08.2024

Index: Yes

Speaking order

Neutral citation: Yes

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