



WEB COPY



W.P.(MD).No.10521 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.10521 of 2021

T.Alagar

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary
to Government,
Municipal Administration and Water
Supply Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Director of Town Panchayat,
Kuralagam,
Chennai-600 005.

3.The District Collector,
Sivaganga District,
Sivaganga.

4.The Executive Officer,
Ilayankudi Town Panchayat,
Ilayankudi Taluk,
Sivaganga District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Mandamus, to direct the 3rd respondent



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to pass orders on the representation submitted by the petitioner dated 29.05.2008 and to regularize the petitioner's service in the post of Junior Assistant from the initial date of appointment on 03.01.2001 with all consequential and other attendant benefits, including arrears of salary, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran,
For F.Deepak

For Respondents : Mr.P.Veerakathiravan,
Additional Advocate General,
Assisted by
Mr.C.Satheesh,
Government Advocate

ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to direct the 3rd respondent to pass orders on the representation submitted by the petitioner dated 29.05.2008 and to regularize the petitioner's service in the post of Junior Assistant from the initial date of appointment on 03.01.2001 with all consequential and other attendant benefits, including arrears of salary, within a time frame to be fixed by this Court.



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2. The facts which led to the filing of this writ petition is as follows:

2.1. The petitioner's father, one Mr.Thoppilan, was serving as a sanitary worker in Ilayankudi Town Panchayat and was regularized in service. While in service, he passed away on 25.07.1995. Subsequently, the petitioner was appointed on compassionate ground in the office of the 5th respondent through the 3rd respondent as Office Assistant on 03.10.2001. Later, he was promoted to the post of Junior Assistant on 02.01.2020. In the meanwhile, the petitioner had made a representation seeking to consider his appointment to the post of Junior Assistant from the original date of appointment on 03.01.2001 by considering his educational qualification. Since the same was not considered, the present writ petition came to be filed.

3. The learned counsel for the petitioner Mr.G.Sankaran submitted that, the matter in hand is no more *res integra* and this Court has dealt with a similar case in W.A.Nos.778 and 779 of 2017, in which the Hon'ble Division Bench of this Court has passed favourable orders to the respondent therein by judgment dated 03.07.2018 and the relevant portion of the same is extracted as follows:



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“12. We are in agreement with the views of the learned Single Judge as expressed in Writ Petitions referred to supra to the effect that the mentioning of the names of the posts is only indicative and not exhaustive. We therefore, see no reason to interfere with the order of the learned Single Judges particularly when the appellants themselves have conceded the fact that there were vacancies in the posts of Junior Assistants and Bill Collectors on the dates when the 1st respondent in each of the appeals were appointed as Sweepers. Once the fact that the 1st respondent in each of the appeals is qualified to be appointed as Junior Assistant or as a Bill Collector, we don't see any reason as to why they should be denied the post that will commensurate with their qualification.”

4. In yet another case in W.A.(MD)No.269 of 2018 another Division Bench of this Court by its judgment dated 27.02.2018, has passed favourable orders to the appellant therein and the relevant portion of the same is extracted as follows:

“5.In these circumstances, the respondents would not be justified in concluding the appellant's eligibility to seek benefit of G.O.Ms.No.206 dated 02.11.1995. The appellant would place reliance of G.O.2(pa) No. 5, Municipal Administration and Water Supply (Town Panchayats-1) Department dated 11.01.2017 and would state that the benefit of



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government order accrued in favour of one K.Kalyanasundar, who is also similarly placed person as that of the appellant.

6.In the light of the above, we are inclined to issue appropriate direction to the respondents to consider the case of the appellant as we have found that the appellant was appointed in a regular vacancy, in sanctioned post with time scale of pay and not in a non provincialised post. That apart, it is stated that there are other government orders where benefit has been extended to similarly placed persons.

7.In the light of the above, this appeal is allowed. The order impugned in this writ is set aside and there will be a direction to the third respondent to consider the appellant's representation dated 04.03.2013, wherein the appellant has placed reliance on a certificate and taking note of the contents of the representation and pass appropriate orders on merits and in accordance with law and forward the same to the respondents 1 and 2 for further action."

5. On the basis of the aforesaid judgments, the learned counsel for the petitioner submitted that, the petitioner is entitled to get the benefit of G.O.Ms.No.206 of the Municipal Administration and Water Supply Department, dated 02.11.1995 and his representation should be considered positively and pressed for allowing the writ petition.



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6. Per contra, the learned Additional Advocate General, relying upon the counter affidavit filed by the 5th respondent submitted that, the scheme of compassionate appointment is a concession and not an absolute right and the same being a special one and the appointments could be made only following the terms and conditions when there was no vacancy in the post of Junior Assistant when the petitioner was appointed. He could be accommodated only in the available vacancy and more particularly, he was not appointed in a non provisionalised post though he was the legal heir of a deceased non provisionalized employee, he was duly appointed in the post of Office Assistant, he came to be appointed in a regular basis in time scale of pay. At this point of time, the learned counsel for the petitioner pointed out that there had been four vacancies of Junior Assistant and four vacancies of Bill Collector at that point of time. For which he placed before me the proceedings of the Madurai and Ramanathapuram District Collector dated 01.06.1973.

7. A careful perusal of the same would reveal that, the said proceedings pertain to the sanction of posts in various districts in which, several posts were sanctioned to the Ilayankudi Town Panchyat of Sivagangai District. For which, the learned Special Government Pleader



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submitted that, there were no vacancies, as on the date of the appointment of the petitioner.

8. Heard the learned counsels on either sides and carefully perused the materials available on record.

9. This Court is of the considered view that the petitioner's claim for compassionate appointment has already been considered and duly he was appointed as Office Assistant in the available vacancy in a regular time scale of pay. The relevant portion of the order passed by the Hon'ble Division Bench of this Court in **W.A.(MD)No.1280 of 2019 dated 16.11.2023** which is applicable to the facts and circumstances of this case is extracted as follows:

“9. The Scheme of compassionate appointment is a concession and not an absolute right. Scheme is not a method of appointment. All the appointments are to be made under the constitutional Scheme and equal opportunity in public appointment is the constitutional mandate. Under the Scheme of compassionate appointment, there is no merit assessment and the eligibility and suitability are not considered by the authorities. Mere death of an employee was taken into consideration for extending the benefit of the Scheme of appointment with an object to mitigate the



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circumstances arising on account of sudden death of an employee, who may be the breadwinner of the family. That being the object, the penurious circumstances prevailing on account of the death of the employee is to be considered by the authorities and other conditions stipulated are also to be complied with.

10. Scheme being a special one, to be implemented scrupulously following the terms and conditions. Large scale compassionate appointments, if made would cause infringement of the rights of lakhs of youths, who all are longing to secure public employment through open competitive process. Therefore, the Government earmarked limited number of posts for providing compassionate appointment. List of seniority is maintained for the purpose of providing appointment on compassionate grounds. Scope of judicial review to grant the relief of compassionate appointment is limited and that being principles we are of the considered opinion that the first respondent is not entitled to seek second appointment on compassionate ground. He was already appointed on compassionate ground to the post of the Record Clerk based on his application and he has accepted the said post and is serving for more than 15 years. Therefore, the second application submitted by the respondent seeking appointment to the post of Junior Assistant on compassionate ground is not maintainable under the Scheme and therefore, the learned Single Judge has erred in granting the relief.”



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10. Obviously, a list of seniority is maintained in every District Collectorate for appointment under compassionate ground and only on the basis of the seniority of various applicants, appointment on compassionate basis are considered for appointment and on the basis of the seniority list maintained by the District Collector of the Collectorate of Sivagangai, the petitioner was duly appointed, appreciating his application for appointment on compassionate ground in the post of Office Assistant in a regular time scale of pay. Later, he was promoted to the post of Junior Assistant on 02.01.2020. Under such circumstances, the petitioner cannot claim any priority to regularize his service in the post of Junior Assistant from the initial date of appointment.

11. Accordingly, this writ petition fails and hence, the writ petition is dismissed. There shall be no order as to costs.

01.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



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To

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L.VICTORIA GOWRI, J.

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