



W.P.(MD)No.9947 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.9947 of 2023

and

WMP(MD)Nos.8748 & 8479 of 2023

K.Mahendra Boopathy

... Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary,
Department of Social Welfare and Nutrition Scheme,
Secretariat, Chennai - 600 009.

2. The Director,
Department of Social Welfare,
Chennai - 5.

3. The District Collector,
O/o. the District Collector,
Tenkasi District.

4. The Commissioner,
Vasudevanallur Panchayat Union,
Tenkasi District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 18.08.2022 in Na.Ka.No.A6/816/2021 on the file of the respondent No.4 and quash the same as illegal and consequently directing the respondents to appoint the petitioner as a Nutrition Meal Cook by relaxing the rules or any other suitable post on the basis of his educational qualification on compassionate ground with the 4th respondent's office within the time stipulated by this Court.

For Petitioner : Mr.T.Thirumurugan

For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

The present writ petition has been filed seeking a Writ of Certiorarified Mandamus to quash the impugned order of the 4th respondent dated 18.08.2022 in Na.Ka.No.A6/816/2021 and consequently directing the respondents to appoint the petitioner as a Nutrition Meal Cook by relaxing the rules or any other suitable post on the basis of his



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educational qualification on compassionate ground in the 4th respondent's office within the specified time.

2. Heard Mr.T.Thirumurugan, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader for the respondents.

3. The petitioner's mother was appointed as an Assistant at a Primary School, Meenakshipuram under the “Puratchi Thalaivar MGR Nutrition Scheme” on 28.07.2003 and subsequently she was promoted as Cooking Assistant at Primary School, Meenakshipuram. The petitioner's mother who was a noon meal cook had died on 17.02.2021 while in harness. The petitioner who is the son of the deceased had filed an application seeking compassionate appointment but the application of the petitioner was rejected stating that the daughter of the deceased alone is eligible for the compassionate appointment. In the impugned order dated 18.08.2022, the reason assigned for rejecting the petitioner's application is that the male heirs of the deceased will not be considered for appointment



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and the compassionate appointment under noon meal scheme can be given only to the female legal heir.

4. In the instant case, the petitioner has got a sister by name Devi and hence the application of the petitioner was rejected stating that the female legal heir of the deceased alone can be considered for compassionate appointment under the scheme.

5. In this regard the Government Order has been issued in G.O.Ms.No.198 dated 25.10.2007, which states that only in the absence of female legal heir, the Rules can be relaxed to accommodate a male legal heir under compassionate appointment scheme.

6. The compassionate scheme being a welfare scheme, the condition as to female legal heirs cannot be construed in such a way that if the deceased has a female legal heir and if she was not a dependent of the deceased, providing appointment to her will not protect the family members of the deceased, and hence she should not be considered for



appointment.

7. The object of the legislature is to provide the appointment to anyone member of the family preferably the female legal heir. Since the preference of the female legal heir has to be adhered and to avoid frivolous applications claiming that the female heir is not willing to accept the appointment, the Government has stipulated that the relaxation Rules can be given only in the absence of the female legal heir. In the instant case, the female legal heir got married and settled as separate family. Even if the female legal heir is married, if she was a dependent of the deceased, her marital status will not be a disqualification for seeking compassionate appointment. But if the female legal heir refuses to utilise the opportunity to get appointed under the compassionate scheme or in case she got married and she does not have any intention to apply for the compassionate appointment, then, obviously, it may be construed as the absence of female legal heir and preference may be given to male legal heir.

8. In the case on hand, it is stated that the female heir not only



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got married but she also did not intend to apply for the appointment. In such case, the non-availability of the female heir can be inferred taking into consideration of the whole circumstances. If the investigation of the authorities reveals that the female legal heir is still in demand for a job and she was depending upon her deceased mother, there need not be any second thought and she has to be considered for the compassionate appointment as per the Government Order. If the female legal heir was not depending upon the deceased and she is unwilling to accept the appointment, then also the non-availability of the female legal heir needs to be presumed. As the Government Order has to be read compatible to the object of the compassionate appointment, the impugned order is liable to be set aside.

9. In the result, this writ petition is **allowed** and the impugned order dated 18.08.2022 in Na.Ka.No.A6/816/2021 passed by the 4th respondent is set aside. The 4th respondent is directed to consider the application of the petitioner in the light of the above observations and by making a complete assessment of the holistic circumstances and then pass



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orders within a period of four weeks from the date of receipt of the copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

12.06.2024

NCC : Yes/No
Index : Yes/No
PJL

To

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2. The Director,
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3. The District Collector,
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