



W.P.(MD)No.12258 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.12258 of 2022

R.Suresh

... Petitioner

vs.

1.The Joint Director of Fisheries (Regional),
Integrated Fisheries Administrative Buildings,
Collector Campus,
Nagapattinam District.

2.The Assistant Director of Fisheries (South),
Integrated Fisheries Administrative Buildings,
Collector Campus,
Nagapattinam District.

3.K.Selvamani

4.P.Geetha

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned proceedings of the first respondent vide order in Na.Ka.No.2201/A/2019 dated 25.09.2020, quash the same as arbitrary and illegal and consequently to direct the respondents to appoint the petitioner on compassionate grounds in the suitable post, based on his



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educational qualification within the time limit that may be stipulated by this Court.

For Petitioner : Mr.K.Dinesh

For Respondents : Mr.M.Ramesh
Government Advocate for R1 and R2

Mr.L.Shaji Chellan for R3 and R4

ORDER

Heard Mr.K.Dinesh, learned counsel appearing for the petitioner, Mr.M.Ramesh, learned Government Advocate appearing for the respondents 1 and 2 and Mr.L.Shaji Chellan, learned counsel appearing for the respondents 3 and 4.

2. The petitioner has filed this petition seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent in Na.Ka.No.2201/A/2019 dated 25.09.2020, quash the same and consequently to direct the respondents to appoint him on compassionate grounds in the suitable post, based on his educational qualification within a stipulated time.



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3. The petitioner who is the second wife's son of the deceased Government employee has filed an application for appointment on compassionate grounds on the death of his father, who worked as a Supervisor in the Tamil Nadu Fisheries Department, Thanjavur Division and died on 26.12.2004 while in service. The petitioner's application was rejected stating that the petitioner is the son of the second wife of the deceased employee; the first wife's legal heirs have objection and they have also claimed appointment on compassionate grounds; and that the the petitioner has filed the application belatedly.

4. The petitioner did not deny the fact that his mother is the second wife of his father and he was six years old when his father died. At the time when the petitioner's father died, the petitioner was not an eligible person who can get the benefit of the Compassionate Appointment Scheme.

5. Mr.K.Dinesh, learned counsel appearing for the petitioner raised a strange submission that the first wife of the petitioner's father is



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already in service and hence, the children of the first wife even though have applied for appointment on compassionate grounds, are not eligible to get that benefit. However, the petitioner's mother who is the second wife of his father does not have an appointment and hence, the petitioner is an eligible person to get the appointment.

6. So long as the petitioner is concerned, there cannot be any dispute on the point that he cannot be considered as an illegitimate son of the deceased just because his mother was the second wife of the deceased. The legitimate status of the such children has already been held by the Supreme Court of India in *Chand Patel vs. Bismillah Behum and another reported in 2008 (2) CTC 308 SC*, wherein, it is held that even if the marriage is irregular / illegal, the children born out of the such marriage are entitled to claim the benefit of their parents. In the Division Bench Judgment of this Court in *H.Anwar Basha vs. Registrar General, Madras High Court and another reported in 2008 (5) MLJ 795*, the issue as to whether such children will be eligible for appointment on compassionate grounds is dealt with and it is held that they are eligible to



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get an appointment on compassionate grounds. Hence, the first respondent cannot reject the application of the petitioner on this ground.

7. The other ground is that the petitioner was a minor and he was aged just 6 years at the time of his father's death and after attaining majority only he had chosen to file an application. It would be within the discretion of the respondents to condone the delay depending upon the merits.

8. In the impugned order itself, it has been observed that the petitioner was 22 years at the time when his application was considered and the other applicants namely the legal heirs of the first wife of the deceased had objected to grant appointment to the petitioner on compassionate grounds. Hence, the petitioner cannot take a stand that delay alone was a reason for rejection of his application.

9. So far as the application of other legal heirs of the petitioner's father is concerned, the respondents 1 and 2 have got an obligation to deal



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with the same in accordance with law and on merits. In fact, they are the persons who had the eligible age at the time when their father died. If the first wife of the petitioner's father was already in service and got retired, and in view of that, the application of other legal heirs was not considered, it is appropriate to pass orders on that score. Furthermore, as the petitioner's mother cannot be a member of the family of the petitioner's father, in the strict sense of the Rules, her economical status cannot be a factor for considering the application of the petitioner.

10. In view of the above stated reasons, the writ petition is **dismissed**. No costs.

06.06.2024

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

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To
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R.N.MANJULA, J.

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