



W.P.(MD).No.12700 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.12700 of 2023

Kaviya

...Petitioner

Vs

- 1.The Joint Registrar of Co-operative Societies,
Madurai Region,
Thallakulam,
Madurai.
- 2.The Deputy Registrar of Co-operative Societies,
Usilampatti Zone,
Usilampatti,
Having office at Thirumangalam,
Madurai District.
- 3.M.T.Spl.115, Periyapoolankulam,
Chinna Poolampatti,
Primary Agriculture Co-operative Credit Society,
Represented by its Secretary,
Periya Poolampatti,
Peraiyur Taluk,
Madurai District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, directing the respondents to appoint the petitioner either as a Clerk or any other suitable post in the respondent Department on compassionate ground, based on the recommendation sent by the second respondent vide his letter dated 17.05.2017 to the first respondent.

For Petitioner : Mr.K.K.Balaram

For R-1 and R-2 : Mr.K.S.Selva Ganesan
Additional Government Pleader

ORDER

Heard Mr.K.K.Balaram, learned counsel for the petitioner and Mr.K.S.Selva Ganesan, learned Additional Government Pleader for the respondent.

2. This Writ Petition has been filed for issuance of Writ of Mandamus, seeking direction against the respondents to appoint the petitioner either as a Clerk or any other suitable post in the respondent Department on compassionate ground, based on the recommendation sent by the second respondent vide his letter dated 17.05.2017 to the first respondent.



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3. Mr.K.K.Balaram, learned counsel for the petitioner submitted that the petitioner's father who was working as Clerk under the respondent Department from 09.12.1986, died in harness on 10.04.2014. Thereafter, the petitioner made an application for appointment on compassionate ground. Since no response thereafter, the petitioner has submitted the application dated 05.02.2020 under Right to Information Act. The second respondent vide reply dated 10.03.2020 informed the petitioner that the service of the petitioner's father was not regularized and hence the applicant is not entitled for employment under compassionate grounds.

4. However, the learned counsel for the petitioner submitted that the services of the petitioner's father was made permanent on 25.06.1991 in the cadre of Attender and as per the resolution dated 05.12.1996, he was promoted as Clerk, which is evident from his Service Register.

5. He further submitted that even the temporary workers will also be included in the scheme in view of the latest Government Order in



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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;

.....

6. 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. 479***, wherein this Court has held that by applying the Rule of Fiction, the 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.”

7. In the instant case, the petitioner's father was working in the respondent Department for more than 20 years. Beside the aforesaid Government Order which includes the persons like petitioner's father also under the scheme, the rule of fiction can also be applied. As per the rule of fiction, a person who had put 15 years of service during his life time had every possibility to get his service regularized. In the instant case, the petitioner claims that her father was appointed in the year 1986 and he was made permanent in the year 1991 and promoted in the year 1996 and died in the year 2014 after having put more than 20 years of service . Hence, Rule of Fiction can be applied to the petitioner's case as well.



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8. 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 respondents to reconsider the petitioner's application.

9. 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** with a direction to the respondents 1 and 2 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.

21.06.2024

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



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R.N.MANJULA, J.

Nsr

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