



W.P.(MD)No.17841 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.17841 of 2022

J.Kavitha

... Petitioner

vs.

- 1.The Joint Registrar,
Co-operative Societies,
N.V.Natarajan Maligai,
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai.
- 2.The Joint Registrar,
Co-operative Societies,
Then District.
- 3.The Deputy Registrar,
Co-operative Societies,
Periyakulam,
Theni District.
- 4.The President,
D-D.417, Thamaraikulam Primary Agricultural
Co-operative Credit Society,
Periyakulam Taluk,
Theni District.



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5.The Secretary,
D-D.417, Thamaraiikulam Primary Agricultural,
Co-operative Credit Society,
Periyakulam Taluk,
Theni District.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 4th and 5th respondents vide their proceedings Nil, dated 20.07.2022 and quash the same as illegal and consequently direct the respondents 2 to 5 provide the petitioner any suitable post on compassionate ground on account of death of her husband S.Jeyaprakash for other reliefs.

For Petitioner	:Mr.J.Lawrence
For Respondents	:Mr.S.Kameshwaran, Government Advocate

ORDER

The petitioner has filed this writ petition challenging the impugned order passed by the respondents 4 and 5 vide their proceedings Nil, dated 20.07.2022 and to direct the respondents 2 to 5 to provide the petitioner any suitable post on compassionate ground on account of death of her husband S.Jeyaprakash for other reliefs.



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2. The learned counsel for the petitioner submitted that the husband of the petitioner was appointed as an 'Attender' in the fifth respondent society from 01.02.1998. On 25.06.2007, the husband of the petitioner died while he was in service. Immediately thereafter, the petitioner made an application for compassionate appointment. However, the said application was rejected which is illegal and the same is liable to be set aside.

3. However, the learned Government Advocate appearing for the respondents submitted that the appointment of the petitioner's husband was not regularised and the proposal to regularize his service was sent on 13.11.2003 and therefore, the petitioner's claim is not covered under the Scheme.

4. However, 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



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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.”

5. In the instant case also, the petitioner claims that her husband was appointed in the year 1998 and he died during the year 2007 after having put 9 years of service and hence, Rule of Fiction can be applied and it can be presumed that the petitioner's husband would have been regularized.



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6. Further, the petitioner has filed the application for compassionate appointment on 10.08.2007 ie., within three years from the date of death of her husband.

7. Taking into account of the long services of the petitioner's husband and by applying the Rule of Fiction, I feel that the second and respondents be given suitable direction to reconsider the petitioner's application.

8. In view of the above stated reasons and also in the light of the judgment held in *S.Gandhimathi's case(cited supra)*, the impugned orders passed by the second and fifth respondents dated 20.07.2022, is set aside and the second and fifth respondents are directed to reconsider the application of the petitioner and pass orders afresh within a period of six weeks from the date of receipt of a copy of this order.



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9. With the above directions, this writ petition stands disposed

of. No Costs.

06.06.2024

NCC: Yes/No
Index : Yes/No
PM

To

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N.V.Natarajan Maligai,
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R.N.MANJULA, J.

PM

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