



WP(MD) No.18902 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.06.2024**

CORAM:

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

W.P.(MD) No.18902 of 2023

and

W.M.P(MD)Nos.15700 & 25887 of 2023

K.Sharmiladevi

... Petitioner

Vs.

1.The Additional Chief Secretary/

Commissioner of Revenue Administration,

Ezhilagam, Cheapuk,

Chennai - 5.

2.The District Collector

Karur District,

Karur.

3.The Tahsildar

Karur Taluk,

Karur 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 Certiorarified Mandamus to call for the records pertaining to the order passed by the 2<sup>nd</sup> respondent in Na.Ka. A1/13328/2017 dated 11.02.2022 and quash the same as illegal and consequently issue appointment to the petitioner under the compassionate ground based on her educational qualification in the respondent department.

For Petitioner : Mr.M.Jegadeesha Pandian

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 passed by the 2<sup>nd</sup> respondent in Na.Ka. A1/13328/2017 dated 11.02.2022 and quash the same as illegal and consequently issue appointment to the petitioner under the compassionate ground based on her



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educational qualification in the respondent department.

2. Heard Mr.M.Jegadeesha Pandian, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents.

3. The petitioner, who is the daughter of the deceased Kottaiyappan has filed this writ petition seeking compassionate appointment in view of death of his father on 06.01.2011, while he was in service. The petitioner made application on 31.01.2022.

4. The learned counsel for the petitioner submitted that the above application was dismissed stating that the application has been submitted beyond three years and that the petitioner happened to be the daughter of the second wife and hence, she is not covered under the compassionate scheme.



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5. The learned counsel for the petitioner submitted that immediately after the death of her father, the petitioner's brother had submitted an application in the year 2013 i.e., on 03.11.2013. But the said application was not considered and in the meanwhile, her brother got some mental health issues. Hence, the petitioner had made an application on 31.01.2022. Until the petitioner submitted the application on 31.01.2022, the earlier application submitted by her brother on 03.11.2013 has not been given with any disposal. Even the application of her brother which was given in time, has not been considered until the petitioner had given her application in the year 2022 and hence, it cannot be strictly stated that the application of the petitioner was given beyond the period of three years. Because the application given by her brother on 03.11.2013 was pending for disposal.

6. However, the learned Special Government Pleader submitted that the brother of the petitioner himself has given the



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application only on 12.08.2017. In one of the communications of the respondents, the date of the petitioner's brother's application has been mentioned as 12.08.2017. However, the petitioner claims that the seal on the application submitted by her brother showed only on 03.11.2013. Whatever may be the case, the fact remains that until the petitioner has given the application to substitute herself in the place of her brother, the application of the petitioner's brother was not given disposed. Even though the petitioner's mother might be the second wife of her father and the validity of her marriage with her deceased father cannot have any ramification on the status of the petitioner.

7. Because law on this point is well settled that the children of invalid or illegal marriages also are legitimate children and the legal heirs of the parents. In this regard, it is essential to refer the earlier judgment of this Court held in W.P.No.27139 of 2021. In the said case, this Court has held as under :



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*“7. In a similar circumstance, the Hon'ble Supreme Court in Union of India and Ors. Vrs. V.K.Tripathi reported in (2019) 14 SCC 646, has held that a child of a second wife of an employee could not be denied for compassionate appointment on that ground alone and the said Judgment was followed in subsequent Judgments of the Hon'ble Supreme Court viz., in Mukesh Kumar and Ors. Vs. the Union of India (UOI) and Ors. reported in MANU/SC/0232/2022. The relevant portions are extracted hereunder:*

*“14. The real issue in the present case, however, is whether the condition which has been imposed by the circular of the Railway Board under which compassionate appointment cannot be granted to the children born from a second marriage of a deceased employee (except where the marriage was permitted by the administration taking into account personal law, etc.) accords with basic notions of fairness and equal treatment, so as to be consistent with Article 14 of the*



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*Constitution.....*

*16. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe, the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the*



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*administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.*

*8. In the present case on hand, the petitioner is the son of the second wife and as held by the Hon-ble Supreme Court, the legitimate children born out of void marriage has been recognised by law itself. Hence, the 1st respondent-s order dismissing the application of the petitioner is liable to be set aside.*

*9. In the result, this Writ Petition is allowed. The order passed by the 1st Respondent in Na.Ka.No.7082/2016/A5, dated 19.03.2021 is quashed. The respondents are directed to reconsider the case of the petitioner by scrutinizing*



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*the application submitted by the petitioner in respect of other requirements and pass appropriate orders on its own merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.”*

8. In view of the above stated reasons, this Writ Petition is allowed. The impugned order passed by the 2nd Respondent in Na.Ka.No.A1/13328/2017, dated 11.02.2022 is quashed. The respondents are directed to reconsider the application of the petitioner on its other merits and pass appropriate orders within a period of eight weeks. No costs. Consequently, connected miscellaneous petitions are closed.

**11.06.2024**

Index : Yes / No  
Internet : Yes / No  
NCC : Yes / No  
RM



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**R.N.MANJULA, J.**

RM

Order made in  
W.P.(MD)No.18902 of 2023

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