



W.P.(MD).No.25818 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.25818 of 2022

P.Sathya Seela

... Petitioner

Vs.

- 1.The Registrar,
O/o. The Registrar of Co-operative Societies,
No.170, N.V.Natarajan Maaligai,
Poonthamalle High Road, Kilpauk,
Chennai.
- 2.The Joint Registrar,
O/o. The Joint Registrar of Co-operative Societies,
Near Natarajar Theatre,
Palanganatham,
Madurai.
- 3.The Secretary,
A-3071 Co-operative Societies,
Karattupatti,
Melnathchikulam, Vadipatty,
Madurai District.
- 4.The Secretary to the Government,
The Department of Co-operative,
Food and Consumer Protection,
Secretariat, Chennai-9.

... Respondents

(R4 is Suo Motu impleaded by this Court on 08.01.2024)



W.P.(MD).No.25818 of 2022

WEB COPY

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to disburse the service benefits of the petitioner's husband namely Sankar to the petitioner with nominal interest and consequently direct the respondents to appoint her on compassionate ground on the basis her educational qualification by considering the petitioner's representation, dated 10.10.2022 within the time stipulated by this Court.

For Petitioner : Mr.T.Thirumurugan

For Respondents : Mr.G.Sivaraja
Government Advocate

ORDER

The present writ petition has been filed to direct the respondents to disburse the service benefits of the petitioner's husband namely Sankar to the petitioner with nominal interest and consequently direct the respondents to appoint her on compassionate ground on the basis her educational qualification by considering the petitioner's representation, dated 10.10.2022 within the time stipulated by this Court.

2. The petitioner's husband was working with the 3rd respondent office as an Attender from 01.12.1997. His service was regularized by the resolution of



W.P.(MD).No.25818 of 2022

the 3rd respondent. While in service, he passed away in an accident on 15.07.2020. On 02.09.2020, the petitioner had sent a detailed representation to the 3rd respondent with necessary documents seeking appointment on compassionate ground. On 05.09.2020, the 3rd respondent has also passed a resolution and had sent a proposal to the 2nd respondent recommending the case of the petitioner to be appointed on compassionate ground as per the proceedings of the 1st respondent, dated 15.11.2006. However, the petitioner's case was not considered for compassionate appointment. Hence, on 10.10.2022, the petitioner sent a detailed representation to the respondents and the same was not considered. That apart, the terminal benefits of the deceased employee was also not disbursed by the respondents. In view of the same, this writ petition came to be filed seeking to direct the respondents to disburse the service benefits of the petitioner's husband, namely Sankar to the petitioner with interest and also to appoint her on compassionate ground on the basis of her educational qualification considering her representation, dated 10.10.2022.

3. The learned counsel for the petitioner submitted that the petitioner's husband though initially appointed as a temporary employee in the post of Attender, later, he was regularized with effect from 01.02.1999. In view of the



W.P.(MD).No.25818 of 2022

same, he is entitled for appointment on compassionate ground and also the terminal benefits of the deceased employee is also being continuously delayed for past 3 years and pressed for allowing the writ petition.

4. Per contra, the learned Government Advocate for the respondents has filed a counter and submitted that the appointment of the petitioner's husband was irregular and was made in violations of the conditions laid down in Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988. Having made the appointment of the petitioner's husband without being sponsored by the employment exchange, beyond the approved cadre strength and considering the fact that his service was not regularized in terms of G.O.Ms.No.86 Co-operation, Food and Consumer Protection Department, dated 12.03.2001, the case of the petitioner seeking appointment on compassionate ground cannot be considered. In view of the same, he pressed for dismissal of the writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.



W.P.(MD).No.25818 of 2022

WEB COPY

6. The learned counsel for the petitioner had vehemently stated that though the petitioner's husband was appointed as a temporary employee in the post of Attender, he was later regularized on 01.02.1999 vide resolution of the 3rd respondent. The petitioner has also placed on record the Service Register of the deceased employee. A careful perusal of the same would reveal that the petitioner's husband was appointed in the permanent post of Attender on 01.12.1997. It is also recorded in the said Service Register that the said employment was regularized with effect from 01.02.1999 providing him with a regular scale of pay. That apart, the learned counsel for the petitioner had produced a circular of the Registrar of Co-operative Societies, dated 09.09.2021 giving instructions with respect to the amendment of Special By-laws covering conditions of service of paid officers and servants so as to insert Transitory special by-law providing for giving promotion to the employees who were appointed from 08.07.1980 to 12.03.2001, whose appointments are irregular and whose services are not regularized. The said circular has given instructions with respect to appointment on compassionate ground with respect to the legal heirs of the employee, who were appointed in the Co-operative Society during the period 08.07.1980 to 12.03.2001 and whose appointments



W.P.(MD).No.25818 of 2022

were made in controvention to the service rules and the relevant portion of which is extracted as follows:

“2. The issue regarding extending these two benefits to the employees of Co-operative Societies whose services are not regularized has been under the consideration. Taking into account of the order, dated 19.02.2021 and clarification order, dated 22.04.2021 of the Hon'ble High Court Madras in W.P.No.21440 of 2015 and W.M.P.No.9463 of 2021 respectively it has now been decided that these two left over benefits namely promotion and appointment on compassionate grounds may also be extended to those employees appointed in Co-operative Societies during the period from 08.07.1980 to 12.03.2001, whose appointments were made in controvention of the service rules and whose services are not regularized, on humanitarian grounds and taking into consideration of their length of continuous service in the society concerned.”

7. However, the learned Government Advocate pointing out Paragraph No.9 of the said circular and vehemently contended that even the instructions of the said circular will not come to the rescue of the petitioner's case in view of the mandates of G.O.Ms.No.18 Labour and Employment (Q1) Department, dated 23.01.2020. For better understanding, the said paragraph is extracted as follows:

“9. With regard to giving compassionate ground appointment to the legal heir of a such employees whose services are not



W.P.(MD).No.25818 of 2022

WEB COPY

regularized, Co-operative Societies have to strictly follow the rules in force as applicable to compassionate ground appointment in Government Service. As per the Government Orders issued in G.O.Ms.No.18 Labour and Employment (Q1) Department, dated 23.01.2020 persons those who are under temporary appointments, consolidated pay, daily wages contract appointments and whose services are not regularized are not eligible for consideration under compassionate ground appointment. Therefore, in order to give compassionate ground appointment to legal heir of employees of Co-operative Societies whose services are not regularized, exemption from the above said G.O. to the extent necessary has to be obtained from the Government. Necessary instructions in this regard will be issued after getting necessary exemption from the Government, which may take some more time.”

8. A cautious reading of Paragraph No.2 along with Paragraph No.9 would give clarity to the fact that the said circular, dated 09.09.2021 of the Registrar of Co-operative Societies has been issued with a specific instruction to extend the benefits in the matter of promotion and appointment on compassionate ground to those employees appointed in Co-operative Societies during the period from 08.07.1980 to 12.03.2001 in controvention to the service rules. In the instant case, the petitioner has been appointed in an irregular vacancy as Attender in the first instance and thereafter, he has been



W.P.(MD).No.25818 of 2022

regularized and provided with regular scale of pay by resolution of the 3rd respondent Society.

9. However, I have no hesitation to hold that the appointment of the petitioner's husband would be covered by Paragraph No.2 of the circular, dated 09.09.2021, since he was appointed between 08.07.1980 to 12.03.2001 i.e., 01.12.1997. However, though Paragraph No.9 of the said instructions would mandate that in case of compassionate appointment, Co-operative Societies should strictly follow the rules in force as applicable to the compassionate appointment in government service following G.O.Ms.No.18 Labour and Employment (Q1) Department, dated 23.01.2020. In the same paragraph, instruction has given a way and out for those seeking compassionate ground appointment by facilitating the societies concerned to obtain an exemption from the Government in that regard. In view of the mandates of the said instructions, this Court suo motu impleads the **Secretary to the Government, The Department of Co-operation, Food and Consumer Protection, Secretariat, Chennai-9** as the 4th respondent. That apart, this Court has already dealt with a similar case in *W.P(MD)No.29233 of 2022 (V.Ramkumar Vs. The Regional Joint Registrar of Co-operative Societies & Others)*, dated 27.09.2023 and has



W.P.(MD).No.25818 of 2022

passed favourable orders to the petitioner therein and the relevant portion of which is extracted as follows:

“5. However, this matter is no more res integra. I have dealt with a similar case in W.P(MD)No.16364 of 2023, dated 08.08.2023 and passed a favourable orders to the petitioner therein and the relevant portion of which is extracted as follows:

5.However, the learned counsel appearing for the petitioner relied upon the Judgment passed by the Hon'ble Division Bench of this Court in W.A(MD)No.558 of 2009, dated 09.11.2009 (The Special Officer Vs. The Deputy Registrar and others), in a similar case, wherein this Court gave a favourable verdict to the petitioner. The relevant portion of which is extracted as follows:-

“6.As far as the first contention of the learned counsel for the appellant is concerned, it is true that there is no scheme in the appellant society for providing compassionate appointments. Nevertheless, it is an admitted fact that such appointments are being made in deserving cases. Therefore, merely because there is no scheme available, the request for compassionate appointment cannot be denied. As far as the impugned order in the writ petition rejecting the request for compassionate appointment is concerned, the Society has rejected the request wholly on the ground that the deceased husband of the first respondent was not regularized.In our opinion, having regard to the fact that the deceased



WEB COPY



W.P.(MD).No.25818 of 2022

employee had put in 15 years of service and in the absence of any scheme stipulating conditions as to consideration of compassionate appointment to the dependants of a regular employee, whether such employee has been made permanent or yet to be made permanent would be highly too technical to reject the application for appointment on compassionate ground. That apart, factually the name of the deceased employee was recommended by the Special Officer of the society in his proceedings dated 29.03.1996 for regularization along with similarly placed persons. However, before such recommendation was given effect to, unfortunately, the employee died on 15.11.1996. From the records it is also seen that within a period of 14 days, ie., on 29.11.1996, the all other persons numbering 14 and whose names were also recommended along with the deceased employee were regularized. The deceased employee could not be regularized as by that time he was not alive. Had been alive, he would have also also been regularized in service. In view of that, the argument of the learned counsel for the appellant that the deceased was not regularized and therefore, the first respondent cannot seek for compassionate appointment cannot be accepted.”

6.Following the same, the learned Single Judge of this Court in W.P(MD)No.1524 of 2020, dated 04.02.2020 (P.Pandeeswaran Vs. The Registrar of Co-operative Society and others) has permitted compassionate appointment for the legal heirs of the temporary employee. The relevant portion of which is extracted as follows:-



WEB COPY



W.P.(MD).No.25818 of 2022

“7.It is also not disputed by the respondents that the services of the similarly placed employees, who had rendered services along with the petitioner's father, have now been regularized. This goes without saying that, had the petitioner's father been alive during that relevant point of time when the services of the similarly placed employees were regularized, the services of the petitioner's father also would have been regularized. The unfortunate and untimely death of the petitioner's father during his services, cannot now be cited as a reason that his services were not regularized and therefore, deprived the petitioner to the benefit of on compassionate appointment.

7.In another case in M.Venkatesh Vs. the Principal Secretary to Government reported in (2021) 2 MLJ 282, the Hon'ble Division Bench of this Court, in a similar case, has held as follows:-

“7. The issue, similar to the present one, has been decided by this Court in various cases and this Court has held that if an employee was qualified for regularization as on the date of his death, then the claim of his legal heirs cannot be rejected. In the present case also, the appellant's father was qualified for regularization as on the date of his death since he had worked for more than 28 years. Therefore, the claim of the appellant cannot be rejected.”

8.This Court is fully in consonance with all the verdicts passed by this Court in the order/Judgment mentioned supra. This is a case where the petitioner's father, who was appointed as attender at the first instance, from which post, he was promoted as



W.P.(MD).No.25818 of 2022

WEB COPY

a Clerk, who remained in the service of the second respondent Society from 19.02.1988 to 17.06.2021 without regularization ie., for a period of 33 years.

9.This Court in a batch of Writ Petitions in W.P.Nos.6425 of 2021 etc batch, dated 12.03.2021 (G.Thamaraiselvan Vs. The Registrar of Co-operative Societies (Housing) and others), has given a direction to the Government to extend the benefit of regularization to all the persons who are similarly placed even though they have not knocked at the doors of the Court.”

10. In the line of all the judgments discussed supra observing that the petitioner's husband had been serving the 3rd respondent Society for more than 23 years and taking into consideration the instructions in the circular of the Registrar of Co-operative Societies, dated 09.09.2021, I hereby direct the respondents to disburse the service benefits of the petitioner's husband, namely Sankar with 6% interest within a period of four (4) weeks from the date of receipt of copy of this order and further direct the respondents to consider the representation of the petitioner, dated 10.10.2022 seeking appointment on compassionate ground and pass appropriate orders appointing the petitioner in an appropriate post in accordance to her educational qualification in terms of



W.P.(MD).No.25818 of 2022

WEB COPY

the discussion supra within a period of twelve (12) weeks from the date of receipt of copy of this order.

11. Accordingly, this Writ Petition stands allowed. No costs.

08.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
gbg

To

- 1.The Registrar,
O/o. The Registrar of Co-operative Societies,
No.170, N.V.Natarajan Maaligai,
Poonthamalle High Road, Kilpauk,
Chennai.
- 2.The Joint Registrar,
O/o. The Joint Registrar of Co-operative Societies,
Near Natarajar Theatre,
Palanganatham,
Madurai.
- 3.The Secretary,
A-3071 Co-operative Societies,
Karattupatti,
Melnathchikulam, Vadipatty,
Madurai District.



W.P.(MD).No.25818 of 2022

WEB COPY

4. The Secretary to Government,
The Department of Co-operation,
Food and Consumer Protection,
Secretariat, Chennai-9.



WEB COPY



W.P.(MD).No.25818 of 2022

L.VICTORIA GOWRI, J.

gbg

W.P.(MD).No.25818 of 2022

08.01.2024