
(2015) 07 MAD CK 0107

In the Madras High Court

Case No : Writ Appeal (MD) No. 766 of 2015 and M.P.(MD) No. 1 of 2015

The District Educational Officer, Cheranmahadevi

APPELLANT

Vs

M. Muthu

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Citation : (2015) 07 MAD CK 0107

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : V.R. Shanmuganathan, Special Government Pleader, for the Appellant

Final Decision : Dismissed

Judgement

S. Manikumar, J—Being aggrieved by the order made in W.P.(MD) No. 8423 of 2008, dated 12.11.2014, quashing the proceedings in O.Mu. No. 3244 of 2007, dated 06.09.2007, on the file of the District Educational Officer, Cheranmahadevi at Tirunelveli, Tirunelveli District, respondent herein, with a direction to the appellant to provide employment assistance, to the respondent on compassionate grounds, subject to satisfying the qualification, prescribed for the post, the present appeal has been filed.

2. Facts as deduced from the supporting affidavit to the writ petition and the materials on record, are that respondent's father was working as a sweeper in Sankar Reddiar Government Higher Secondary School and died on 12.12.1995, in harness. He was married to one Esakkiammal and through her, he had three male children. His marriage with the first wife ended in divorce. At the time of filing of the writ petition, he was aged 28 years. The other two sons, Thiru. Sombukutti and Thiru. Paramasivan, born through the 2nd wife Lakshmi, 2nd wife were aged 25 and 19 years, respectively.

3. The respondent/writ petitioner has submitted an application to provide employment assistance on compassionate appointment, along with necessary documents, viz., (i) School Certificate, (ii) No Objection Certificates from his

mother, brothers and step brothers, (iii) Declaration of the respondent to work anywhere in Tamil Nadu, (iv) Legal Heir Certificate and (v) Certificate from the Tahsildar that his family does not have any other property, other than a house, worth Rs. 5,000/-. At that time, his step brother, Thiru. Mayandi, was working as a Sanitary Worker in Kalakadu Town Panchayat. The Tahsildar, vide Certificate, dated 21.03.2001, has certified that the said Thiru. Mayandi was living separately and not supporting the family of the respondent in any manner. The respondent's family continued to live in indigent circumstances.

4. Despite satisfying the requirements for employment assistance on compassionate grounds, citing G.O.Ms. No. 560, Labour and Employment Department, dated 03.08.1977, the appellant, vide order in O.Mu. No. 3244 of 2007, dated 06.09.2007, rejected the application of the respondent. Hence, the writ petition.

5. By filing a counter affidavit, the appellant has opposed the prayer, for employment assistance on compassionate grounds, inter alia contending that, as per the conditions imposed in G.O.Ms. No. 998, Labour and Employment, dated 02.05.1981, if there is already an earning member in the family of the Government servant, who died in harness, other dependants are not eligible for compassionate appointment. However, the said condition was relaxed to a limited extent in G.O.Ms. No. 155, Labour and Employment Department, dated 16.07.1993, to the effect that if such an earning member in the family is living separately, without extending any help to the family of the bereaved Government servant, then the case of other eligible dependants can be considered.

6. Before the Writ Court, contention has also been raised that as per G.O.Ms. No. 49, Personnel and Administrative Reforms Department, dated 14.05.2002, the minimum educational qualification for the post of office assistant is a pass in VIII Standard, whereas, the respondent petitioner has passed only 3rd Standard and failed in 4th Standard. The appellant has further contended that though the respondent has submitted a Certificate from the Tahsildar that his step brother, Thiru. Mayandi was living separately and that there was no assistance or support from him, Smt. Lakshmi, 2nd wife of the deceased Government servant, has not reported that she was not receiving any help from the said Thiru. Mayandi. Likewise, Thiru. Mayandi has not given any statement to the effect that he is not extending any help to the family of Tmt. Lakshmi, the 2nd wife of the deceased Government servant and therefore, it could not be ascertained as to whether the said Thiru. Mayandi, was extending any assistance or support to the family of the respondent.

7. A further contention has also been raised by the appellant that as per G.O.Ms. No. 49, P & AR Department, dated 06.05.2002, all the works, under Class "D" category, except Office Assistant, others should be progressively outsourced and such work has to be entrusted on contract basis. Considering the rival submissions, vide order, dated 12.11.2014, the Writ Court, while setting aside the rejection order, dated 06.09.2007, at Paragraphs 2 and 3, held as follows:

"2. The only ground on which the petitioner's application rejected was that the petitioner's step brother by name Mayandi was employed as sweeper in Erikadu Panchayat Union. The learned counsel for the petitioner has drawn the attention of this Court to G.O.Ms. No. 155, Labour and Employment Department, dated 16.07.1993, as per which when a member of the deceased family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family and if that person was employed even before the death of the Government servant and was living separately without extending any help to the family and then the case of other eligible dependants can be considered. Whereas in the present case, except stating that the petitioner's stepbrother is employed, as Sweeper, other factors, i.e., as to whether, he is regularly employed and is actually supporting the family and whether he is employed before the death of the Government servant and has been living separately, are not duly appreciated in order to consider the petitioner's eligibility for compassionate appointment. In this regard, the documents to be looked into are the certificate issued by the Tahsildar, Nanguneri to the effect that the stepbrother by name Mayandi is of no help to the petitioner's family and the petitioner's family is still living in indigent circumstances.

3. When that being the case, this Court is of the view that it is a fit case, wherein, the petitioner can be considered for compassionate appointment on account of the death of his father in harness. The denial of such benefit to the petitioner is contrary to law and the impugned order is hence arbitrary and not sustainable."

8. Assailing the correctness of the order, Mr. V.R. Shanmuganathan, learned Special Government Pleader submitted that the Writ Court has failed to consider that as per G.O.Ms. No. 155, Labour and Employment Department, dated 16.07.1993, if any of the legal heirs of the deceased employee, is already employed and not supporting the family of the deceased employee, then only, the claim of the other legal heir can be considered. According to him, though the respondent was born through the first wife of the deceased Government servant, his stepbrother, Thiru. Mayandi, born through Lakshmi, was already working in Kalakadu Town Panchayat, as a Sweeper and lending support to the entire family and therefore, the respondent is not eligible to seek for employment assistance on compassionate grounds.

9. It is also his submission that the respondent has failed to substantiate his claim for employment assistance on compassionate grounds, on the aspect that the family is not getting any support from the stepbrother, Thiru. Mayandi. Contention has also been raised that the appellant is not the competent authority to make regular appointment on compassionate grounds and only the State Government has got powers to relax the rules of employment, i.e., age and communal reservation/Roster, in order to provide appointment on compassionate grounds, and therefore, positive directions ought not to have been issued to the appellant.

Heard the learned Special Government Pleader for the appellant and perusal the materials available on record.

10. Before adverting to the grounds of challenge, this Court deems it fit to extract G.O.Ms. No. 560, Labour and Employment Department, dated 03.08.1977, which deals with the procedure of recruitment and clarifications issued, and the same is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Public Services - Employment assistance to Families of deceased Government servants - Procedure of recruitment - clarifications Issued.

Labour and Employment Department

G.O.Ms. No. 560

Dated the 3rd August 1977 Read:

1. G.O.Ms. No. 225, Labour, dt., 15.02.1972
2. Govt. Memo No. 58029/L3/73-2, Labour and Employment, dated 04.01.1974.
3. Govt. Memo No. 23660/N.II/74-2, Labour and Employment, dated 20.09.1974.
4. Govt. Memo No. 25155/N.II/74-B, Labour and Employment, dated 04.09.1975.
5. Govt. Memo No. 31275/B.II/76-2, Labour and Employment, dated 31.12.1976.
6. From the Director of Employment and Training Lr. No. Z45632/74, dated 01.09.1974.
7. From the Director of Employment and Training Lr. No. 45635/74, dated 03.09.1974.

ORDER:

In the G.O., 1st read above and in the subsequent memoranda 2nd to 5th read above, the Government have permitted the recruitment of wife/husband/son/unmarried daughter/near relative of the Government servant who dies in harness without reference to the Employment Exchange, subject to certain conditions. In the practical application of the G.O., and subsequent amendments read above, several clarifications have been sought for by Heads of Departments and others. The points raised have been examined in detail in consultation with the Director of Employment and Training. The Government have issued the following clarifications:

- (1) (a) The appointing authorities who have already made appointments of dependants of the Government servants who died in harness prior to 15.2.1972, where such appointments have not yet been regularized by the Government should send proposals in such cases to Government in the administrative

department of the Secretariat concerned, through their Heads of Departments, for examination and decision on the merits of the each case in consultation with Labour and Employment Department, for regularisation of termination of services.

(b) In future, requests for appointment of dependents of the Government Servants who died prior to 15.2.1972 can be considered favourably and proposals sent to Government in the following type of cases:

At the time of consideration of his dependents case for appointment, the Government Servant presumptive date of superannuation (i.e. had he lived) should not have been reached. In other words, the grant of the concession would be considered only upto the presumptive date of superannuation of the Government Servant For example, if a Government servant died in 1965 and the date of his superannuation would have been 1.10.1981 if he were alive, his dependant apply for a post on the date prior to 1.10.1981 only.

(2) The term "near relative" is defined and to include the wife/husband/sons/unmarried daughter of the Government Servant who died in harness. Cases of near relatives such as brothers/sisters etc., of the deceased Government Servants should be excluded.

(3) The Government are of the view that no distinction be made between natural such and death by murder, etc., as deaths by murder, suicide, etc., will be few and far between in as much as the family of Government Servant who dies of suicide will be put to the same ship as the family of the Government Servant who dies a natural death. Therefore, the appointing authorities are empowered to waive the general procedure of recruitment through employment Exchange in the cases of appointments of dependants of the Government Servants committed suicide or were murdered.

(4) The appointing authorities are responsible for satisfying themselves about the indigent circumstances of the family of the deceased Government servant before appointment is offered. They need not insist on the production of any certificate from the applicant

(5) The concession the G.O. is applicable in respect of all regular posts with in the purview of the Tamil Nadu Public Service Commission also subject to the observance of the procedure of obtaining the specific concurrence of the Commission in individual cases after examination of each case on merits, under the latter part of Regulation 16(b) of the Tamil Nadu Public Service Commission.

(6) The candidates seeking employment under the G.O., should possess all the prescribed qualifications for the posts concerned and these conditions should not be relaxed in individual cases.

(7) The dependants who are appointed on temporary basis, should be given their normal place in the list of seniority and they can be ousted for want of vacancy strictly according this list.

(8) Dependent of deceased Government servant can be appointed in any department if the qualifications of the applicant do on assumptions and presumptions as appointments once made will be difficult to be terminated."

11. Further clarifications have been issued in Memo. No. 3410/N1/77-1, dated 04.05.1978, as follows:

"The Government of India in the Ministry of Home Affairs, Department of Personnel and Administrative Reforms Department, have granted certain further concessions to the dependants of their Government servant who died in harness leaving their families in indigent circumstances. After the issue of the G.O. 7th read above, the Collector of Madras have raised certain clarifications arising out of the above G.O. The Government have examined these in detail and then pass the following orders:

(1) The dependant of a Government servant who died in harness leaving his family in indigent circumstances, is eligible to avail of the concession granted in the Government Order read above, even when there is already an earning member in the family, if in the opinion of the appointing authority the family is in indigent circumstances. Before deciding the indigent circumstances of the family, the appointing authority should take into account the number of dependants left, the movable and immovable assets and liabilities left by the deceased Government Servant, the income of the earning member in the family, as also his liabilities. However the concession under the Government Orders read above should not be granted to more than one dependant in the family of the deceased Government servant.

2. The District Collectors are requested to register the dependants of Government servants appointed under the Government Orders read above and ousted for want of vacancy, in the register, maintained as per G.O.Ms. No. 50, P&AR, dated 19.11.1976 and provide them employment in preference to other ousted temporary Government servants."

12. One of the conditions prescribed in G.O.Ms. No. 225, Labour and Employment, dated 15.02.1972, for providing employment assistance on compassionate grounds, is that the family of the deceased government servant should be in "indigent circumstances". Subsequently, orders were issued in G.O.Ms. No. 998, Labour and Employment, dated 02.05.1981, introducing a new condition that if there is already any earning member in the family of the Government servant, who died in harness, the other dependants of the deceased Government servant will not be eligible for compassionate appointment. The above aspects were re-examined by the Government and as the expression "indigent circumstances" has not been precisely defined, the Government have issued orders in G.O.Ms. No. 155, Labour and Employment Department, dated 16.07.1993, issuing clarifications, regarding indigent circumstances of the family, and as to whether the payment of money in Provident Fund accumulations, Family Benefit, Death-cum-Retirement Gratuity, Encashment of leave, at credit,

at the time of death, etc., has to be considered, while determining the indigent circumstances. The clarification issued with reference to the above, are as follows:

"One of the conditions prescribed under the scheme of appointment on compassionate grounds formulated in the G.O. first read above is that the family of the deceased Government servant should be in "indigent circumstances". Another condition introduced in the G.O. third read above is that if there is already any earning member in the family of the Government servant who died in harness, the other dependants of the deceased Government servant will not be eligible for compassionate appointment.

2. The Government have re-examined the above mentioned conditions. The expression " indigent circumstances" has not been precisely defined. It has been left mostly to the subjective satisfaction of the appointing authorities. Therefore the service Associations have represented that this condition be deleted. The family of a deceased Government servant is entitled to Provident Fund accumulations, Family Benefit, Death-Cum-retirement Gratuity, Encashment of leave at credit at the time of death, etc. The Government consider that those amounts or the interest earnings that will accrue on depositing these amount; need not be taken into consideration. It is therefore necessary to ascertain whether the family is having immovable property like houses, lands, etc., the income from which is substantial to sustain the family without any extra help. The Government therefore direct that criteria for indigent circumstances is that the family should not own any house or landed properties or if owned, income from which is insufficient to sustain the family. A certificate from the Tahsildar to this effect will have to be produced.

3. In regard to the second condition mentioned in para 1 above, it is considered that if a member of the family is already in employment and supports the family then the restriction may be applied. When a dependant of the family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family. If that person was employed even before the death of the Government servant and was living separately without extending any help to the family, then the case of other eligible dependants will be considered.

4. However, the restriction that only one of the dependants will be entitled for appointment on compassionate grounds will continue.

5. Only the dependants of the deceased Government servant Viz., wife/husband/ son/unmarried daughter will be eligible for appointment, she could be given a job like sweeper. The Government also direct that a married daughter who is deserted by her husband and living with the family of the deceased Government servant and widowed or divorced daughter living with the family may be considered, if the widow of the deceased Government servant gives her consent in writing.

6. Age restrictions of 30 in the case of sons/unmarried daughters or 40 in the case of widow/widower will continue.

7. All cases requiring relaxation will be decided by the Committee constituted with reference to para 20 of the Chief Minister's standing order No. 2 Personnel and Administrative Reforms dated 9.1.92.

8. These orders will be applicable to families of Government servants who have retired on medical invalidation before attaining the age of 50 years."

13. Reverting to the facts of this case, material on record discloses that after the death of the Government Servant, Marimuthu, a Sweeper in Sankar Reddiar Government Higher Secondary School on 12.12.1995, the Tahsildar, Nanguneri, has issued a Legal Heir Certificate, dated 23.09.1996, as hereunder:

14. An application for compassionate appointment has been made by the respondent on 01.06.1997. Annexure to the application, contains the particulars of the respondent. He was born on 30.05.1979. He has failed in IVth Standard. Post to which, employment assistance sought for, is that of a Sweeper. His father, Marimuthu, was also a Sweeper. As per the details contained in the application, monthly income of the family, by way of family pension and other similar sources, was Rs. 2,500/-. Check list enclosed along with the application is as follows:

15. Tahsildar, Nanguneri, in his Certificate in Mu.Mu. No. 1686/2001, dated 21.03.2001, has certified that Thiru. Mayandi, son of the first wife, was living separately and that there was no assistance or support to the family of the 2nd wife of the deceased government servant, Mrs. Lakshmi. Contents of the certificate, dated 21.03.2001, is extracted hereunder:

16. Further certificate in Mu.Mu.M7 6180/2007, dated 29.05.2007, issued by the Tahsildar, Nanguneri, substantiates the indigent circumstances of the family of the respondent. The said certificate is extracted hereunder:

17. The reason assigned for rejection of the application of the respondent, in the order, dated 06.09.2007, of the District Educational Officer, Cheranmahadevi at Tirunelveli, is as follows:

18. Grounds of challenge to the order made in W.P.(MD) No. 8423 of 2008, dated 12.11.2014, are to the effect that the respondent has not substantiated his contention that his stepbrother, Thiru. Mayandi, working as a Sweeper in Kalakadu Town Panchayat, was not extending any financial support to the family of the 2nd wife of the deceased Government servant, Mrs. Lakshmi, by production of any documents, except stating the same, in the supporting affidavit to the writ petition and that therefore, the Writ Court, with reference to G.O.Ms. No. 155, Labour and Employment Department, dated 16.07.1993, ought to have rejected the request for employment assistance.

19. Though, during the course of hearing, Mr. V.R. Shanmuganathan, learned

Special Government Pleader submitted that Thiru. Mayandi, is also living along with the family of the respondent/writ petitioner and that therefore, the respondent/writ petitioner is not eligible to seek for employment assistance on compassionate grounds, such a contention cannot be countenanced, in the light of certificate of the Tahsildar, Nanguneri, in Mu.Mu. No. 1686/2001, dated 21.03.2001, to the effect that there was no assistance or support by Thiru. Mayandi, stepbrother, to the family of the second wife of the deceased, Lakshmi. We are dealing with the request of the respondent, who is the son of Esakkiammal, first wife of the deceased Government servant, and not the family of Lakshmi, 2nd wife.

20. Further contentions to the effect that the District Educational Officer, Cheranmahadevi at Tirunelveli, Tirunelveli District, is not the competent authority to make regular appointment on compassionate grounds, and only the State Government has got the powers to relax the normal rules of Public employment, i.e., age and communal reservation/Roster, in order to provide appointment on compassionate grounds, are untenable. Clauses 3 to 7 of G.O.Ms. No. 560, Labour and Employment Department, dated 03.08.1977, are as follows:

"(3) The Government are of the view that no distinction be made between natural such and death by murder, etc., as deaths by murder, suicide, etc., will be few and far between in as much as the family of Government Servant who dies of suicide will be put to the same ship as the family of the Government Servant who dies a natural death. Therefore, the appointing authorities are empowered to waive the general procedure of recruitment through employment Exchange in the cases of appointments of dependants of the Government Servants committed suicide or were murdered.

(4) The appointing authorities are responsible for satisfying themselves about the indigent circumstances of the family of the deceased Government servant before appointment is offered. They need not insist on the production of any certificate from the applicant.

(5) The concession the G.O. is applicable in respect of all regular posts with in the purview of the Tamil Nadu Public Service Commission also subject to the observance of the procedure of obtaining the specific concurrence of the Commission in individual cases after examination of each case on merits, under the latter part of Regulation 16(b) of the Tamil Nadu Public Service Commission.

(6) The candidates seeking employment under the G.O., should possess all the prescribed qualifications for the posts concerned and these conditions should not be relaxed in individual cases."

21. Reading of the above, makes it clear that the appointing authorities are empowered to waive the general procedure of recruitment, through employment Exchange and that therefore, the contentions to the contra, that the Government alone is the authority to make regular appointment, on compassionate

appointments, and that the rules regarding communal roster and age have to be relaxed only, by the Government, cannot be accepted. Such a contention raised in the memorandum of grounds, is devoid of merits.

22. As per the certificate of the Tahsildar, Nanguneri, family of the deceased is in indigent circumstances. In the check list, extracted supra, a certificate has been submitted, evidencing indigent circumstances. The Government servant died on 12.12.1995. Application has been made on 01.06.1997, within a period of three years, from the date of death. The respondent was aged about 28 years, at the time of submitting an application, for employment assistance, on compassionate grounds, as sweeper. His father was also working as Sweeper in Sankar Reddiar Government Higher Secondary School, Nangunari.

23. The respondent has not sought for employment assistance as Junior Assistant and that therefore, the averments made in the counter affidavit that as per G.O.Ms. No. 49, Personnel and Administrative Reforms Department, dated 14.05.2002, the minimum educational qualification for the post of office assistant, is a pass in VIII Standard, and whereas, the respondent/writ petitioner has passed only 3rd Standard and failed in 4th Standard and thus, not eligible for appointment, on the ground of lack of required educational qualification, even in the lowest post of Office Assistant, are liable to be rejected, as the request was only to the post of Sweeper.

24. As per Rule 5 of the Tamil Nadu Basic Service Rules, no person shall be eligible for appointment by direct recruitment to any category of the service in class I, II and III, unless he has passed the III form or the VIII Standard (or the E.S.L.C.) of a recognised school. But for the post of Gardener, Sweeper and Sanitary Worker, no educational qualification is prescribed and that the only required qualification is ability to read and write in Tamil and for compassionate appointment, even the said qualification can be dispensed with.

25. The respondent has satisfied the eligibility criteria for the post of sweeper. The Writ Court has only directed the appellant to consider the case of the respondent, for employment assistance on compassionate grounds, subject to satisfying the other qualifications, which means to the post, he is eligible to be considered.

26. In the light of the above, there are no grounds to interfere with the impugned order in W.P.(MD) No. 8423 of 2008 dated 12.11.2014. Writ Appeal is dismissed. No costs. Consequently, M.P.(MD) No. 1 of 2015 is closed.