

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.3.2009

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.7560 of 2003

K.Balakrishnan

.. Petitioner

Vs.

1. The Government of Tamilnadu  
rep. by the Secretary  
Rural Development Department  
Fort St.George, Chennai-9.

2. The Collector of Cuddalore  
District, Old District Board  
Buildings, Cuddalore-1.

3. The Commissioner  
Panchayat Union  
Mangalur, Cuddalore District.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus to call for the records of the first respondent in his impugned letter No.34561/E/6/2002-5, dated 10.12.2002, to quash the same and to direct the respondents herein to appoint the petitioner herein on compassionate grounds in any of the Departments.

For Petitioner : Mr.Kannan

for M/s.P.V.Rangaraajan

For Respondents:

Mrs.Malarvizhi Udayakumar

Spl. Government Pleader

for respondents 1 and 2

Mr.V.Subbarayan

for 3<sup>rd</sup> respondent

ORDER

The petitioner is the son of Late S.Kaliyaperumal, who worked as a Higher Grade Assistant Teacher in V.Kudikadu Panchayat Union Elementary School of Cuddalore District. The said S.Kaliyaperumal died on 15.8.1975, while in service under the third respondent.

2. As per the scheme introduced in G.O.Ms.No.225, Labour Department, dated 15.2.1972, the petitioner is stated to be entitled for employment on compassionate grounds. It is seen that when an application was made to the third respondent on 9.7.1997, the third respondent scrutinized the records and recommended to the second respondent for providing a job, by his letter dated 21.9.1997. It appears that the second respondent/District Collector also, in his turn, has made his recommendation to the first respondent on 26.6.1999. Thereafter, there was no order passed and after a complaint was sent to the Chief Minister's Cell also there was no step taken by the respondents and the petitioner, therefore, approached the Tamil Nadu Administrative Tribunal by filing O.A.No.6741 of 2001. However, the said Original Application was dismissed by the Tribunal on 18.10.2001, stating that the petitioner is not eligible.

3. It was against the above said order of the Tribunal that the petitioner approached this Court by filing W.P.No.32521 of 2002 and the First Bench of this Court, by order dated 8.8.2002, directed the first respondent to consider the request of the petitioner in accordance with law. It was thereafter, by the impugned order dated 10.12.2002, the first respondent rejected the claim of the petitioner on the basis that the petitioner was born to Late S.Kaliyaperumal through the second wife and there is no provision for providing compassionate appointment to children born through second marriage. It is as against the impugned order, the present writ petition is filed.

4. The learned counsel for the petitioner, Mr.Kannan, would submit that the order, as such, is not maintainable due to the sole ground that the reason adduced in the impugned order, that the son born through the second wife of the deceased employee is not entitled to compassionate appointment, is totally wrong, in the sense that even the son born to an illegitimate wife has a right to be considered as a legal heir of the deceased employee.

5. In N.Panneerselvam v. Secretary to Government, Public Works Department, Chennai and Others, (2009) 1 MLJ 54, while considering a similar issue, this Court has held that even children born through illegitimate marriage are entitled to the benefits as the legal heirs of the deceased employee and they cannot be denied the right of compassionate appointment. This Court, after referring to a judgment of the Division Bench of this Court in H.Anwar Basha v. Registrar General (Incharge), (2008) 5 MLJ 795, has held as follows:

"5. Law is well settled that even if the second marriage of the petitioner's father is void, as per the Hindu Marriages Act, the children born through such void marriage cannot be held to be illegitimate. In the

factual situation here, the first respondent itself has admitted that in respect of the pension and DCRG, which are property rights, the petitioner is conferred such right by treating him as legal heir of the erstwhile employee of the first respondent. In such circumstances, the strange conclusion by the first respondent that the petitioner would not be entitled for compassionate appointment simply because his father has married the second wife which is a void marriage. Such reason is absolutely not sustainable."

6. The Division Bench of this Court in H.Anwar Basha v. Registrar General (Incharge), referred supra, while deciding the ratio in cases of this nature, has prescribed three points to be followed for providing compassionate appointment, which are as follows:

"I. Even on assuming that the marriage is irregular or void, if the petitioner is a dependent of the deceased Government Servant, he would be entitled for the benefit.

II. The eligibility criteria prescribed to get employment assistance to families of the deceased Government Servants would make it clear that the dependents of the deceased Government Servant include the son and it does not denote whether the son should be legitimate or illegitimate son of the parents.

III. In order to achieve the object of providing employment assistance to the bereaved family, it would be necessary to examine whether the dependent is supporting the family to mitigate the sufferings of that family, relieving the bereaved family from the indigent circumstances. Therefore when the object is met, the question of whether the delinquent dependent is a legitimate or illegitimate legal heir cannot be a stumbling block for the dependent to get employment."

7. Similar view was also taken by another Division Bench of this Court in Geetha Ramani v. District Educational Officer, Kancheepuram, (2004) 4 MLJ 177.

8. In view of the settled legal position, there is no difficulty to conclude that even children born through void marriage cannot be rejected as illegitimate. Of course, as submitted by the learned counsel for the petitioner, in the present case, it is not as if Late S.Kaliyaperumal married the mother of the petitioner as second wife during the life time of his first wife. As submitted, it was only after the death of the first wife, Late S.Kaliyaperumal married the

mother of the petitioner. In that view of the matter also it cannot be held that the marriage is illegitimate.

9. In these circumstances, the reasons adduced in the impugned order for rejecting the claim of the petitioner are not sustainable and therefore, this writ petition stands allowed and the impugned order is set aside, with a direction to the first respondent to consider the claim of the petitioner for the purpose of appointment on compassionate ground and pass appropriate orders granting the relief, expeditiously, in any event within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, W.P.M.P.No.1583 of 2008 is closed.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1. The Secretary  
Government of Tamilnadu  
Rural Development Department  
Fort St.George, Chennai-9.
2. The Collector of Cuddalore  
District, Old District Board  
Buildings, Cuddalore-1.
3. The Commissioner  
Panchayat Union  
Mangalur, Cuddalore District.

- 1 cc To The Government Pleader, SR.11289.  
1 cc To Mr.P.V.Rangarajan, Advocate, SR.10731.

W.P.No.7560 of 2003

LA(CO)  
RVL 06.04.2009