**HC Writ Compensation**

IN THE HON'BLE HIGH COURT OF TN AT CHENNAI

CWP No.:\_\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

List Of Events

Dates \_\_\_\_\_\_

Events \_\_\_\_\_\_

chennai

Petitioner

\_\_\_\_\_\_

Through, Advocate

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CWP No:\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

CIVIL WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR APPROPRIATE \

WRIT, ORDER OR DIRECTIONS TO THE RESPONDENTS

Chennai

Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Through, Advocate

Respectfully Sheweth;

1. That your Lordship's humble petitioner is a citizen of India and on the grounds hereinafter mentioned

is entitled to file and maintain the present writ petition before this Hon'ble Court.

2. \_\_\_\_\_\_

**GROUNDS**

3. That the petitioner is invoking the extra-ordinary jurisdiction of this Hon'ble court and seeking indulgence on the following grounds amongst other each one of which is without prejudice to and independent of other :-

(a) That such an act of omission and commission on the part of the respondent whereby they have \_\_\_\_\_\_, is illegal, arbitrary, malafide, discriminatory, and against the well-established principles of natural justice as well as violative of the mandatory provisions of the Constitution of India.

(b) That \_\_\_\_\_\_

(c) \_\_\_\_\_\_\_That the term dependent has been defined in The Employees' State Insurance Act, 1948 as under:- "[(6A) 'dependent' means any of the following relatives of a deceased insured person, namely: -
(i) A widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter;

(ia) A widowed mother;

(ii) If wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;

(iii) If wholly or in part dependent on the earnings of the insured person at the time of his death, -

(a) A parent other than a widowed mother,

(b) A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor;

(c) A minor brother or an unmarried sister or a widowed sister if a minor,

(d) A widowed daughter-in-law,

(e) A minor child of a pre-deceased son,

(f) A minor child of a pre-deceased daughter where no parent of the child is alive, or

(g) A paternal grand-parent if no parent of the insured person is alive;"

(ii) That the word "dependent" has similarly been defined in The Workmen's Compensation Act, 1923 vide Section 2 (c).

(d) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ That the petitioner is entitled for compassionate appointment even when his brother who is in employment but living separately right since the lifetime of his deceased father and is in no way supporting the family of the deceased employee.

(e) \_\_\_\_\_ That the object of Clause 5 (c) of the instructions is to mitigate the financial difficulties of the family of the deceased employee. The same object cannot bee annulled simply because one son of the deceased employee is already in service and in no way supporting the family of deceased employee. Such condition runs contradictory to the object behind the scheme. The Clause 5 (c) is reproduced hereunder:-

"5. Eligibility:-

(c) In all cases where one or more members of the family are already in Government service or in employment of Autonomous bodies/Boards/Corporations etc; of the State/Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family. In cases, however, where the widow of the deceased Government servant represents or claims that her employed sons/daughters are not supporting her, the request of employment assistance should be considered only in respect of the widow. Even for allowing compassionate appointment to the widow in such cases the opinion of the Department of Personnel and Finance Department should specifically be sought and Finance Department should specifically be sought and the matter finally decided by the Council of Ministers"

(f) \_\_\_\_\_\_That the law in this regard is well-settled as has been laid down in this regard by the Hon'ble High Court of TN in CWP 635/1984 decided on 20.05.1985, wherein the Hon'ble High Court of TN while dealing with almost the similar situation has held in the penultimate paragraph that "Aravindan had submitted that liberty should be reserved to the respondent to take action afresh against the petitioner in accordance with law. We do not think, on the facts and in the circumstances of the case, such liberty should be reserved. The petitioner was first employed in August 1981. Her services were terminated in June 1984 but the termination order was withdrawn and she continued in service till the impugned order was passed on October 31, 1984. She has thus served for about 3 1/4 years. Her conduct has been above reproach since she is not shown to have suppressed the material fact regarding the employment of her two brothers. Her version that the brothers were living separately and were not maintaining her and her widowed mother given out at the very first stage was not only duly verified by the Pradhan of the Gram Panchayat and the Executive Magistrate but has not been fond to be incorrect on the basis of any proper inquiry held so far. Even in the return it is not stated that upon any inquiry independently made by the respondent the version is found to be incorrect, although the petitioner has re-asserted on oath the same version in the petition. The case apparently is not covered by the relevant instructions governing the recruitment procedure having regard to the definition of the word "family". The petitioner has to support herself and her mother who widowed eleven years back when the petitioner's father died in a motor accident. Having regard to all the circumstances, we are of the view that the petitioner should be spared of any further agony and trouble and that the chapter must be treated as closed."

(g) \_\_\_\_\_That the similar view has been taken by the Hon'ble High Court of TN in CWP No. 326 of 1992 decided on 04.01.1993 while dealing with above provision in the penultimate para has held that:- "We have gone through the matter carefully with the kind help extended by the learned counsel for the parties. We have noticed that Shri. Hari Dass is, of course, the son of the deceased but he has been living separately from Shri Devi and her other issues. He was in the service of the Corporation even while the deceased was alive. The fact as to his separate living gains support from the certificate of Pradhan Gram Panchayat, Satrol (Annexure-PE), affidavit of Shri Devi (Annexure PC) and affidavit of Hari Dass (Annexure PD). If these affidavits are read with the definition of 'family' contained in Rule 2 (e) (ii) of the Municipal Employees (Conduct) Rules, 1970, it is absolutely clear that a son who is living separate from the family is not a member of the family. Even otherwise, the facts of this case, as already notices above, demonstrate quite clearly that Hari Dass was living separately and was in employment while the deceased was also in the employment of the respondent-Corporation. The widow of the deceased has also supported it and wants the present petitioner employed in the Corporation. So are the affidavits of other relations. Same is the position explained in Supplementary Rules, Section IV, Division II, SR 2(8). The view we have taken, has also been taken by the Karnatka High Court in 1992 (1) Labour Law Journal 129, Raja (K) Vs Karnatka Electricity Board."

(h) \_\_\_\_\_\_\_That in the last para of the above judgment the Hon'ble High court has held that "The result of the aforesaid discussion is that this writ petition is allowed and the respondent Corporation is directed to employ the petitioner to the service of the Municipal Corporation against a post which is in consonance with his qualifications. In case no vacancy is available, the same be created to employ the petitioner. We allow the respondent Corporation three months time for this purpose."

(i) \_\_\_J \_\_That the similar view has been taken by the Hon'ble High Court of Chennai in case Monica Devi Vs LIC (1993 (3) Service Cases Today), Santosh Tuli Vs UOI (1995 (4) SCT 267), Hon'ble High Court of TN in Chhabi Sood Vs Chairman, Tamil Nadu Gramin Bank (1994 (3) SCT 724/725), Hon'ble Karnatka High Court in Shusheela B Bhakta Vs Karnatka State Road Transport Corporation (1995 (3) SCT 382), Hon'ble Jammu & Kashmir High Court in Anwar Farooqi Vs UOI (1998 (3) SCT 794/795).

(j) \_\_\_\_\_\_That the underlying object of the policy framed by the state government dated 18.01.1990 is to provide employment assistance to the dependents of Govt. servants, who die while in Govt service, leaving their families in indigent circumstances as has been stated at outset of the policy. In the instant case too the family of the deceased employee was left in indigent condition by his death. His elder son has already severed his relations with his father and other family members during his lifetime. The wife of the deceased employee is illiterate and not in a position to serve in the respondent department. It is further submitted that the separation of brother of the petitioner is not being used as ploy by the petitioner for getting the appointment on compassionate basis but he is actually living separately since life time of the deceased employee due to restrained relations with the family and he is in no way supporting the family of the deceased employee and in this respect the overwhelming evidence was already brought before the respondent department and this tribunal.

(k) That the respondents are estopped due to their own act, deed and conduct. The principle of the Promissory Estopple applies against the respondents.

(l) That the impugned order is against the well settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

3. That the petitioner has no other speedy and efficacious remedy available except to approach this Hon'ble court by way of the present writ petition.

4. That the petitioner has not filed any other writ petition on same or similar grounds either before this Hon'ble court or before the Supreme Court of India.

5. That the petitioner, therefore, prays that an appropriate writ, order or directions be issued for the following reliefs :-

(a) Quash the impugned order \_\_\_\_\_\_\_;

(b) Direct the respondents \_\_\_\_\_\_;

(c) Direct the respondents to produce all the relevant records along with reply for perusal by this Hon'ble court;

(d) Allow the cost of this writ petition to the petitioner, and;

(e) Allow such other relief or pass such other orders as deemed fit and proper in the facts and circumstances of the case in favour of the petitioner and justice be done.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY.

Chennai

Petitioner

\_\_\_\_\_\_

Through, Advocate

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CWP No:\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

Affidavit in support of the Civil Writ Petition under Articles 226/227 of the Constitution of India.

I,\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :

1. That the accompanying writ petition has been prepared under my instructions.

2. That the contents of paras 1 to \_\_\_\_\_\_ of the accompanying writ petition are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Chennai this the \_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CMP No.:\_\_\_\_\_ of 2004 in CWP No:\_\_\_\_\_\_ of 2004

Petitioner/Applicants

Versus

Respondents/Non-Applicants

Application Under Rule 2 of the Writ Rules for dispensing with Seven days notice of motion

Respectfully Sheweth:

1. That the petitioner/applicant has filed the above mentioned writ petition in this Hon'ble court.

2. That on perusal of the allegations made in the writ petition and the documents attached therewith it

is evident that the matter is of urgent nature and dispensing with of seven days notice is essential in the

interest of justice.

3. It is, therefore, prayed that this application may be allowed and seven days notice of motion

dispensed with and writ petition be listed immediately.

Chennai

Petitioner/Applicant

\_\_\_\_\_\_

Through, Advocate

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

C. M. P. No.: \_\_\_\_\_\_ of 2004 in CWP No:\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Affidavit in support of the application under Rule 2 of the Writ Rules.

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :-

1. That the accompanying application has been prepared under my instructions.

2. That the contents of paras 1 to 3 of the accompanying application are correct and true to the best of

my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false

and nothing material has been concealed therein.

Affirmed at Chennai this the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

CMP No.:\_\_\_\_\_\_ of 2004 in CWP No:\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Application Under Rule 4 of the Writ Rules for Ad interim orders

Respectfully Sheweth:

1. That the petitioner/applicant has filed the above mentioned writ petition in this Hon'ble court.

2. That on perusal of the allegations made in the writ petition and the documents attached therewith it

is evident that the petitioner/applicants have prima facie a very good case in their favour and the writ

petition is likely to succeed. The Balance of Convenience is in favour of the petitioners/applicants.

3. That the interest of justice demands that during the pendency of the writ petition \_\_\_\_

4. It is, therefore, prayed that this application may be allowed and \_\_ in the interest of justice. Such

other orders may also be passed in favour of the petitioners as deemed fit and proper by this Hon'ble

court in the facts and circumstances of the case.

Chennai

Petitioner/Applicant

\_\_\_\_\_\_

Through, Advocate

**IN THE HON'BLE HIGH COURT OF TN AT CHENNAI**

C. M. P. No.:\_\_\_\_\_\_ of 2004 in CWP No:\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Affidavit in support of the application Under Rule 4 of the Writ Rules.

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :-

1. That the accompanying application has been prepared under my instructions.

2. That the contents of paras 1 to 4 of the accompanying application are correct and true to the best of

my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false

and nothing material has been concealed therein.

Affirmed at Chennai this the \_\_\_\_\_\_.

Deponent

**In the High Court of TN at Chennai**

Mention Memo

1. Number & Nature of case: \_\_\_\_\_\_\_

Vs

2. Party seeking posting:

Petitioner/Appellant

3. Name of Advocate of :

\_\_\_\_\_\_\_Advocate

party seeking posting.

4. Name of Advocate :

\_\_\_\_\_\_\_

appearing for the opposite party

5. Mention for:

Motion/Admission/Orders.

6. Reason for the mention: \_\_\_\_\_\_\_\_

7. Date on which posting is sought: \_\_\_\_\_\_\_\_\_

Chennai

\_\_\_\_\_\_\_

Advocate