

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Writ Appeal No.1474 of 2011
& M.P.No.1 of 2011

1. The Chief Engineer,
Highways and Rural Works Department,
Chepauk,
Madras-600 005.
 2. The Divisional Engineer,
Highways and Rural Works Department,
Saidapet Division,
Madras.
- .. Appellants

Vs.

Pushparaj,
S/o. Late V.Ganesan,
Maippeedu Village & Post,
Tiruvallur Taluk and District,
Tiruvallur-631 402.

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 28.09.2010 made in W.P.No.39018 of 2005.

Writ Petition came to be numbered under Article 226 of the constitution of India for Issuance of Writ of Certiorarified Mandmaus by way of transfer of O.A.No.4683 of 2000, to call for the records in respect of the Impugned proceedings passed by the Second Respondent in Order No.13457/87/85, dated 15.06.1999 and quash the same and direct the respondents to forthwith appoint the petitioner in any suitable post on compassionate grounds.

For appellants : Mr. R. Rajeswaran,
Special Government Pleader.
For respondent : Mr.Amalraj S.Penikilapatti

J U D G M E N T

(The Judgment of the Court was delivered by V.Dhanapalan,J)

This Writ Appeal is directed against the order of the learned single Judge of this Court dated 28.09.2010, made in W.P.No.39018 of 2015.

2. Before the Writ Court, the sole respondent herein claimed that his father was employed as Gang Mazdoor in the appellants-Department, namely, Highways and Rural Works Department and died while in harness on 05.02.1981, leaving behind his wife, namely the mother of the writ petitioner and two sons. The mother of the respondent/writ petitioner is getting family pension. At the time of the death of his father, the respondent/writ petitioner was aged about 12 years, and therefore, he made an application on 25.11.1987 requesting for appointment on compassionate grounds. The Superintending Engineer of the Department, Chennai Circle, wrote a letter dated 21.11.1990 to the District Collector, Chengai Anna District (Kancheepuram District), recommending the application of the writ petitioner for compassionate appointment. The respondent/writ petitioner also produced all the required certificates for consideration. While so, the second appellant herein passed an order on 15.06.1999 in Order No.13457/87/B5, rejecting the claim of the respondent/writ petitioner for compassionate appointment. Challenging the said order, he filed O.A. No.4685 of 2000 before the Tamil Nadu Administrative Tribunal, Chennai, praying for quashing the order of the second appellant, dated 15.06.1999 and for direction to the appellants to forthwith appoint him in any suitable post on compassionate grounds. Subsequent to the abolition of the Tamil Nadu Administrative Tribunal, the said O.A. stood transferred to this Court and numbered as the present Writ Petition in W.P.No.39018 of 2005. By the impugned order, dated 28.09.2010, the learned single Judge allowed the Writ Petition and quashed the order, dated 15.06.1999 passed by the second appellant and directed the appellants herein to pass suitable orders granting compassionate appointment to the respondent/writ petitioner, within a period of 12 weeks from the date of the order. Challenging the said order of the learned single Judge, the officials of the Highways and Rural Works Department are in appeal before this Court.

3. Heard Mr.R.Rajeswaran, learned Special Government Pleader appearing for the appellants and Mr.Amalraj S.Penikilapatti, learned counsel appearing for the sole respondent.

4. According to the learned Special Government Pleader, the view taken by the learned single Judge as to the earlier date of application submitted by the respondent/writ petitioner, is not correct and the same is not supported by any material information and this cannot be the basis for setting aside the order passed by the

competent authority. He had submitted that so many years have passed on, after the demise of the employee and therefore, it cannot be stated that the family continued to remain in distress and prayed for allowing the Writ Appeal.

5. Refuting the said submissions, learned counsel for the respondent/writ petitioner contended that the object of appointing a person on compassionate grounds, is only to mitigate the sufferings of the bereaved family atleast to some extent by extending them the monetary support and in the case on hand, when the deceased employee died, his son/writ petitioner was only 12 years old and this Court can imagine the plight of the family. According to him, as soon as the writ petitioner became major, he approached the competent authority for appointment by preferring an application seeking appointment on compassionate grounds and enclosed necessary certificates as to the required qualifications. As his claim was rejected on unsustainable grounds, he was forced to approach the Tribunal/this Court and this Court allowed the Writ Petition. According to the learned counsel for the petitioner, the impugned order of the learned single Judge need not be interfered with, as the same has been passed taking into consideration the peculiar facts and circumstances of the case.

6. A perusal of the impugned order of the learned single Judge reveals that the father of the respondent/writ petitioner died on 05.02.1981; at the time of the death of his father, he was only aged about 12 years; after acquiring necessary qualifications, he applied for appointment on compassionate grounds, which was rejected by the second appellant on the ground that the respondent/writ petitioner applied for compassionate appointment only on 21.04.1997, while he acquired the necessary qualifications as early as in the year 1987; the certificates relating to indigent circumstances and income certificate stand in the name of the respondent/writ petitioner and the Service Register of the respondent's father was misplaced and no sufficient particulars of the deceased employee are available in the newly constructed Register. The learned single Judge considered the matter at length and having noticed that the impugned order dated 15.06.1999 was passed by the second appellant without application of mind, as he stated that the writ petitioner made an application only on 21.04.1997, though he acquired the required educational qualifications in the year 1987 itself and the learned single Judge went on to extract the letter dated 21.11.1990 of the concerned authority, in his order. In the said letter, the Superintending Engineer of the Department, Chennai, has referred to G.O.No.1179, Administrative Reforms Department, dated 17.10.1979 and stated that, as per the referred G.O., Mr.G.Pushparaj, S/o. V.Ganesan, Gang Mazdoor, sought for appointment to the post of Record Clerk on compassionate grounds and though he has sufficient educational qualifications, he has no opportunity of appointment in his

Department and then, the Superintending Engineer requested the District Collector to include Pushparaj's name in the list maintained in that District and to appoint him as and when vacancy arises. Thus, it is clear from the aforesaid letter that the respondent/writ petitioner applied for compassionate appointment as early as in 1990, which was considered by the Superintending Engineer and then forwarded to the District Collector. The Superintending Engineer is the higher authority than the Divisional Engineer. Therefore, the very first reason given by the second appellant to reject the claim of the respondent/writ petitioner that he has approached the authorities only in the year 1997, falls to ground.

7. The next reason for rejection of respondent's claim is that the certificate relating to the indigent circumstances and income certificate are in the name of the respondent/writ petitioner. The learned single Judge has not accepted the reason given by the second appellant to reject the claim on this ground also. According to the learned single Judge, it is not the case of the second appellant that the writ petitioner did not produce the certificate relating to the indigent circumstances of the family and income certificate and while the authority who issued the certificates, granted the same in the name of the writ petitioner, which according to the learned single Judge, and even according to us, could not be cited as a reason to deny the compassionate appointment.

8. The other reason given by the second appellant is that the Service Register of the deceased-employee was misplaced and therefore, no sufficient particulars of his employment are available in the newly constructed Register. As rightly pointed out by the learned single Judge, the second appellant should blame his own office for having lost the Service Register of the deceased-employee and instead, they cannot punish the individual, viz., the son of the deceased-employee, on the ground that sufficient service particulars are not available in the Department. Admittedly, the widow of the deceased-employee is getting her family pension and thus, undoubtedly, the deceased was employed in the said Department. Therefore, this ground also is unsustainable.

9. Apart from the above factual aspects of the matter, it is pertinent to note that the application seeking compassionate appointment could not be rejected on the ground that it was not submitted within the time limit and that completion of 18 years of the claimant, i.e. submitting the application after his attainment of majority, is not a mandatory requirement, when the claimant seeking compassionate appointment has also to be necessarily considered on humanitarian grounds with humane approach.

10. Further, it is relevant to note a decision of this Court reported in 2004 (3) CTC 120 = 2004 (4) MLJ 238 = MANU/TN/0337/2004

(T.Meer Ismail Ali Vs. Tamil Nadu Electricity Board), wherein, the deceased Board employee died on 13.04.1993 and the application submitted by the petitioner therein on 05.08.1997, was rejected on the ground that he had not completed 18 years of age and after completing 18 years of age, when an application was made on 04.07.2000, it was rejected on the hyper-technical ground that the application was not made within three years from the date of death, as per the Board Proceedings, dated 13.10.1995 and this Court, considering the said hyper-technical ground raised by the respondent-Board therein, set aside the said order and remitted the matter to pass fresh orders without reference to the objections already raised by the Board. The said order was challenged by the TNEB in the Writ Appeal and the First Bench of this Court dismissed the Writ Appeal in W.A.No.4008 of 2004 on 01.12.2004, against which, Special Leave Petition was preferred in Special Leave to Appeal (Civil) No.6387 of 2005, which was also dismissed on 04.04.2005 by the Supreme Court and consequently, the writ petitioner therein was given compassionate appointment. It is also relevant to notice a decision of the Madurai Bench of this Court reported in 2011 (4) MLJ 438 (A.Musthafa Iqbal Basha Vs. State of Tamil Nadu), wherein, this Court, while exhaustively relying on various decisions of the Apex Court, laid down the "ratio-decidenti" as follows:

"Any delay in the submission of application for compassionate appointment on the reason of attainment of majority of applicant, does not given an implication that the family of the concerned deceased Government employee has gotten over their indigent circumstances and an order rejecting such claim for compassionate appointment on ground of such lapse of time, is unsustainable."

11. Furthermore, in the decision of the Supreme Court reported in 2000 (6) SCC 493 (Balbir Kaur Vs. Steel Authority of India Limited), the Apex Court held that in the cases of compassionate appointment, considering the social and economic justice as enshrined in the Constitution of India, denial of deserving cases is liable be set aside.

12. Moreover, it is also to be noted that any rigid approach or too hyper-technical objections raised by the authorities in rejecting the compassionate appointment, will defeat the very object of the scheme of compassionate appointment and it is for that purpose, while considering the request for compassionate appointment, the authorities are expected to act as a Good Samaritan, overlooking the cobwebs of technicalities. Moreover, there cannot be any yardstick or any hard and fast rule in making compassionate appointments.

13. It is also pertinent to note that while underlying the principles of compassionate appointment, the Supreme Court in the

decision reported in 2006 (9) SCC 195 (Syed Khadim Hussain Vs. State of Bihar) observed that in the Rules framed by the State, there is no specific provision as to what should be done in case the dependants are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting the application. In the case on hand, the writ petitioner applied within three years of his attaining majority, and the fact remains that his mother was unqualified to apply for any post at the relevant point of time, though she is getting family pension. Hence, the contention of the learned Special Government Pleader appearing for the appellants that the writ petitioner should have applied for appointment on compassionate grounds, within three years from the date of the death of his father/Government servant. as per Government Letter No.15871/PM-1/99-1, dated 25.10.1999, is liable to be rejected, as the writ petitioner applied in 1987, i.e. within three years of his attaining majority and moreover, the said Government Letter dated 25.10.1999 was issued only in 1999 and it has no applicability to the case of the present writ petitioner, as he applied for compassionate appointment as early as in 1987 itself and the said Government Letter will have no retrospective application to the case of the writ petitioner. Hence, the application submitted after attaining majority, is considered to be neither wilful nor wanton, legitimately expecting a job from the authorities to eke out his livelihood and also to bring the family from the perils of financial crunch and uphold the majesty of family-hood, although the family pension is being paid to the mother of the writ petitioner, which is only a meagre amount given the present day cost of living.

14. It is also worthwhile to note that in the decision of the Supreme Court reported in 1989 (4) SCC 468 (Sushma Gosain and others Vs. Union of India and others), the Supreme Court held that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be delay in appointment, that the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to the death of the bread-winner in the family, that such appointment should therefore be provided immediately to redeem the family in distress, that it is improper to keep such case pending for years, and that if there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant. In the case on hand, at one stage, the writ petitioner's request for compassionate appointment was kept in cold storage due to lack of vacancy and he was recommended for considering his case only as and when the vacancy would arise. This attitude of the appellants/Department goes against the direction of the Supreme Court in the said case of Sushma Gosain (cited supra).

15. It is also useful to refer a decision of the Supreme Court reported in 1999 (9) SCC 546 = AIR 2000 SC 106 = MANU/SC/0708/1999 (State of Bihar Vs. Dr.Braj Kumar Mishra and others), wherein the

Apex Court held that normally, mandamus can be issued by a Writ Court, directing the authority to consider the case of the writ petitioner, but in exceptional circumstances, however a positive direction can be issued by granting the relief in favour of the writ petitioner, if the Court is otherwise satisfied. In the case on hand, the learned single Judge has rightly issued such positive direction, taking into consideration the totality of the facts and circumstances of the case and upon satisfying himself with the reason set out by the appellants/Department for rejection in the impugned order dated 15.06.1999 as being not sustainable, with which direction, we find no ground to interfere, but to dismiss this Writ Appeal filed by the State.

16. Thus, the object of compassionate appointment is to mitigate the sufferings of the bereaved family. It cannot be delayed unduly for one reason or the other and it must be looked into in a sympathetic manner. There are certain provisions giving relaxation and concession in the matter of compassionate appointment. Such concession has to be given in the matter of genuine claims for appointment on compassionate grounds. Hence, all the above decisions and the background facts and circumstances of the case have to be taken into account while considering the case of appointment on compassionate grounds.

17. In the light of the above discussion and submissions made by the learned counsel for the respective parties, we are of the considered opinion that the view taken by the learned single Judge, on the basis of the materials placed before the Court, is in no way vitiated in law and needs no interference whatsoever by this Court. The impugned order of the learned single Judge is legal, proper and in furtherance of justice, equity and fairness in action and therefore, it deserves to be confirmed and the Writ Appeal has to be dismissed.

18. Accordingly, the appellants-Department shall implement the impugned order of the learned single Judge by passing appropriate orders granting compassionate appointment to the suitable post for the respondent/writ petitioner, taking into account his qualifications. If no such post as observed by the appellants-Department earlier, is available, a supernumerary post shall be created for the writ petitioner to accommodate him befitting his qualifications, as directed by the Supreme Court in the case of Sushma Goasin (cited supra). The above exercise shall be completed by the appellants/State, within a period of six weeks from the date of receipt of a copy of this judgment.

19. With the above observations and direction, the Writ Appeal is dismissed. No costs. The Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gp/cs

Copy to

1. The Chief Engineer,
Highways and Rural Works Department,
Chepauk,
Chennai-600 005.
2. The Divisional Engineer,
Highways and Rural Works Department,
Saidapet Division, Chennai-15.

W.P.No.1474 of 2011

rsk(co)
pmk.30.3.2015



WEB COPY