

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.1335 of 2015

R.Sathish Kumar

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Petitioner

- Vs -

1.The Director,
Directorate of School Education,
College Road,
Chennai - 600 006.

2.The District Educational Officer,
Connor, Nilgiris District.

3.The Headmaster,
Government High School,
Kinnakorai, Nilgiris District.

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Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in Na.Ka.No.94939/14/2013 dated 20.12.2013 confirming the proceedings of the 2nd respondent in Na.Ka.No.7069/A4/2008 dated 20.8.2010 and quash the same and consequently direct the respondents to provide appointment to the petitioner on compassionate ground in any of the Government School in Tamil Nadu.

For Petitioner : M/s.Dr.R.Gouri

For Respondents: Mrs.M.E.Rani Selvam,
Additional Govt. Pleader.

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The case of the petitioner is that his father late K.Ramasamy was working as a Night Watchman in the 3rd respondent Government School. During the course of employment, the petitioner's father died on 15.01.1995 leaving behind his wife, son and two daughters as his legal heirs. At the time of his demise, the petitioner was nine years old and the petitioner's mother was uneducated and she was looking after her three children after her husband's demise. The petitioner attained the age of majority on 05.05.2004.

3. It is further stated that after attaining majority, the petitioner applied for compassionate appointment on 27.10.2006 before the 3rd respondent. However, the application of the petitioner was rejected by the second respondent on 20.08.2010 stating that the application for compassionate appointment was made beyond the prescribed period of three years from the date of death of the petitioner's father. Against the said order, the petitioner preferred appeal before the 1st respondent, which was dismissed on 20.12.2013. Aggrieved by the said order, the petitioner is before this court by way of this writ petition.

4. Heard Mrs.Dr.R.Gouri, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Govt. Pleader appearing for the respondents.

5. The learned counsel for the petitioner submitted that on the date of the death of the petitioner's father, the petitioner was only nine years old and attained majority on 05.05.2004. Relying upon the judgments of this court in W.A.No.2452 of 2011 and W.P.(MD) No.986 of 2009, it is further contended that since the application was filed within three years from the date of attaining his majority, the only reason assigned by the respondents for rejection of the application cannot be sustained.

6. Learned Additional Govt. Pleader would contend that the petitioner's father died leaving behind four legal heirs namely, wife, two daughters and the petitioner herein. The sisters of the petitioner were aged about 16 yrs. and 12 yrs. respectively at the time of death of their father and the petitioner has not given any explanation as to why the petitioner's sisters have not applied for compassionate appointment, within three years of their attaining majority.

It is further stated that the present application is filed after a lapse of eleven years, which would show that the petitioner was not in indigent state after the demise of his father.

7. In similar facts, this court in 2004 (3) CTC 120 in the case of T.Meer Ismail Ali v. The Tamil Nadu Electricity Board has observed as follows -

2. The petitioner's father was employed in the Electricity Board as Accounting Supervisor in the Aruppukkottai Revenue Unit of Kamarajar Electricity Distribution Circle, now known as Virudhunagar Distribution Circle. He met with a sudden death on 13.04.1993 due to cardiac arrest while in service, leaving behind his wife, three daughters and the petitioner. When the petitioner made an application earlier for compassionate appointment on 05.08.1997, the same was rejected by the respondent-Board stating that he had not completed 18 years of age and therefore his application cannot be considered. Subsequently, the petitioner is said to have acquired a Diploma in Electrical and Electronic Engineering and after completing 18 years of age in 2000, he made an application for compassionate appointment on 04.07.2000. The said application was also rejected by the respondent Board stating that the application was not made within three years from the date when B.P.No.46 dated 13.10.1995 came to be issued.

3. It is not in dispute that the petitioner completed 18 years of age only in the year 2000. When the petitioner's earlier application was rejected on the ground that he did not complete 18 years of age, it cannot be held that the petitioner was not diligent in seeking for compassionate appointment at the earliest point of time. In fact, immediately after attaining 18 years of age and also after qualifying himself, when the petitioner came forward with the present application on 04.07.2000, in all fairness, the respondent should have considered the petitioner's claim on merits. In fact in the application, the petitioner would claim that one of his sisters is mentally retarded and therefore, he is the only breadwinner of the

family.

4. In such circumstances, it was a deserving case where the respondent should have shown some compassion while considering the petitioner's application for compassionate appointment. Unfortunately, the respondent did not seem to have shown any compassion at all and mercilessly rejected the petitioner's application on a hyper technical ground.

8. The Hon'ble Division Bench of this Court in W.A.No.2452 of 2011, while concurring with the view taken by the Single Judge of this Court in the decision reported in 2004 (3) CTC 120 [T.Meer Ismail Ali v. The Tamil Nadu Electricity Board] held as follows -

7.It is seen that two reasons have been assigned for rejecting the appellant's request, firstly by stating that her son did not complete 18 years of age on the date of demise of his father. The appellant's son was born on 20.12.1984 and his father died on 14.9.2002 and the son had completed 18 years of age on 20.12.2002. Even prior to the demise of the appellant's husband, her son had completed the +2 examination as of March 2002. Further, it is not in dispute that the application for compassionate appointment was made well within the period of three years. Admittedly, on the date of demise of the appellant's husband, her son had passed +2 examination and therefore it cannot be stated that a suitable employment cannot be offered to a person who has completed +2 examination. Therefore, we find no force in the contention of the respondents stating that the appellant's son did not have the requisite educational qualification and this submission is factually incorrect since as early as in March 2002, the appellant's son had passed +2 examination, whereas his father had died about three months before he could complete 18 years of age. In any event, the Government has stipulated that a request for compassionate appointment can be submitted within a period of

three years from the date of demise of the employer. Therefore, the respondent cannot nullify such an application on the ground that the dependant did not complete 18 years of age on the date of demise of the employee, whereas in the instant case, the dependant had completed 19 years on the date of application. Therefore, when an application is well within the period of limitation prescribed by the Government, which is in effect a scheme for compassionate appointment, such application cannot be thrown out on such hyper technical ground as has been stated in the order impugned in the writ petition. Therefore, we are also unable to accept the stand taken by the respondents in this regard.

9. In another decision rendered by the learned Single Judge of this Court in W.P.(MD) No.986 of 2009 dated 11.12.2009 in the case of M.Syed Sagubar Sathiq vs. The Principal Chief Engineer, Water Resources cum Chief Engineer (Public) Public Works Department, Chepauk, Chennai and others, it has been held as follows -

11. It is pertinent to note that the said order is in printed form. There is absolutely no reference whatsoever in respect of the previous communication sent by the respondents 1 to 3. It is seen that the petitioner was a minor at the time of the death of his father on 23.11.1980. It is pertinent to note that the petitioner attained the age of majority on 15.06.1998 and he immediately preferred an application on 25.07.1998 well within the period of three years from the date of attaining his age of majority.

12. In a catena of decisions, this court has categorically held that the period of limitation of three years is to be reckoned from the date of attaining the age of majority.

10. In the instant case, it is not in dispute that the petitioner applied for compassionate appointment within three years from the date of his attaining majority. The respondents rejected the application of the petitioner on the ground the application is not given within three years as per G.O.Ms.No.202

Labour and Employment Department dated 08.10.2007 and the letter of the Department dated 04.05.2010. In the light of the decisions referred supra the reason assigned by the respondent for rejecting the claim of the petitioner cannot be approved by this court.

11. Further, what was argued by the learned Additional Govt. Pleader do not reflect in the orders impugned in this writ petition. It is settled law that the respondents cannot be permitted to improve their case at this stage. Hence, I do not find any force in the contention of the respondents.

12. In such view of the matter, the orders impugned in this petition are set aside. Consequently, the writ petition is allowed and the 2nd respondent is directed to consider the petitioner's application, on merits, as expeditiously as possible, preferably within a period of four (4) weeks from the date of receipt of a copy of this order. It is needless to say that the petitioner should satisfy the respondents with regard to the requisite qualification for the post to which the appointment is to be considered as well as the continuance of the indigent circumstances of the family of the deceased making it eligible for a compassionate appointment even as on today.

13. The writ petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Director,
Directorate of School Education,
College Road,
Chennai - 600 006.

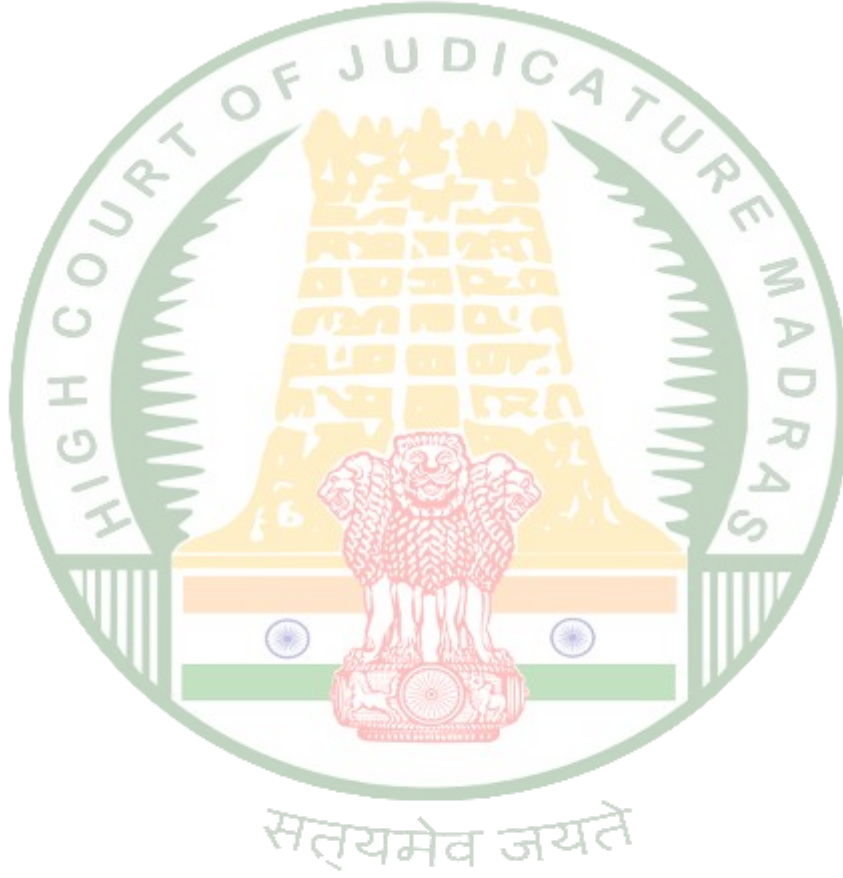
2.The District Educational Officer,
Connor, Nilgiris District.

3.The Headmaster,
Government High School,
Kinnakorai, Nilgiris District.

+lcc to M/S.R.Gouri, Advocate sr.60393
+lcc to The Government Pleader sr.60726

W.P.No.1335 of 2015

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