

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.20161 of 2015

U.Mahalakshmi

... Petitioner

-Versus-

- 1.State of Tamil Nadu,
Rep. By its Secretary,
Medical & Rural Development Department,
Fort St. George,
Chennai.
- 2.The Director of Medical and Rural Development,
[Family Welfare],
Chepauk, Chennai.
- 3.The Joint Director of Medical and Rural Development,
[Family Welfare],
Cuddalore.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus, calling for the entire records relating to the order passed by the 2nd respondent in Ref.No.31120/E8/1/2015 dated 18.06.2015 and to quash the same and consequently direct the respondents to provide for a suitable employment to the petitioner on compassionate ground.

For petitioner : Mr.K.Vasudevan

For Respondents : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

ORDER

The petitioner is the daughter of late Mr.K.Uthirapathy. The petitioner states that her father worked as a Driver in the respondent Department and died on 22.07.2006 while he was in service. He died leaving behind his wife-Tamilarasi, daughter - Manimegalai, son -Bharathiraja, mother - G.Kasiammal and another daughter, the petitioner herein.

2. The petitioner would state that after the death of her father, an application was submitted to the respondents seeking employment assistant to her brother - Bharathiraja on compassionate grounds. The petitioner would further state that she is a Post Graduate in Arts subject and Under Graduate in Education and she is searching for a job. Her elder sister has already got married. While so, her bother expired on 05.01.2014 due to illness before his turn for employment assistance on compassion ground could reach.

3. In such circumstances, the petitioner submitted an application to the 3rd respondent seeking employment assistance for her on compassionate ground and the 3rd respondent, in turn, having considered the indigent circumstances of the family of the deceased Government servant forwarded the same to the respondents 1 and 2 for further action. But, there was no reply from the respondents 1 and 2.

4. In the above circumstances, she was forced to file a writ petition in W.P.No.10166 of 2015 seeking for appropriate direction to the respondents to provide for employment assistance to her on compassionate ground. This court, by order dated 08.04.2015, disposed of the writ petition.

5. In the above said order, this court, while permitting the petitioner to make a fresh representation enclosing the order of this court, directed the 2nd respondent therein to consider the representation of the petitioner and dispose of the same in accordance with law within a period of twelve weeks from the date of receipt of a copy of the order. Further, in the above said order, this court, made it clear that even if the applicant is married, employment assistance on compassionate ground cannot be deprived of on account of her marriage.

6. Accordingly, she made a representation to the 2nd respondent and that the 2nd respondent, in turn, passed the impugned order thereby rejecting her claim for compassionate appointment on two grounds, namely, (i) when the family members of the deceased Government servant had already nominated Mr.U.Bharathiraja for employment on compassionate ground, they cannot change their nomination for employment on compassionate ground for other legal heirs; and (ii) that the application for compassionate appointment has not been submitted within a period of three years from the date of death of the Government servant.

7. Challenging the above said order of the 2nd respondent the petitioner is now before this court with this writ petition and for a consequential direction to the respondents to provide her suitable employment on compassionate ground.

8. I have heard Mr.K.Vasudevan, the learned counsel for the petitioner and Mr.V.Jayaprakash Narayanan, the learned Special Government Pleader, who takes notice for the respondents and also perused the records carefully.

9. The learned counsel for the petitioner would submit that the first reason stated in the impugned order is that when the family members of the deceased Government servant has nominated Mr.U.Bharathiraja and submitted an application seeking employment on compassionate ground, they should not have changed their nomination for employment on compassionate ground to the other legal heir. According to him, the brother of the petitioner namely, Mr.U.Bharathiraja died on 05.01.2014 before his turn for employment on compassionate ground could reach and thus the said situation only warranted seeking employment assistance for her on compassionate ground. The instructions given by the Government in its letter No.56104/AD2/2008-3, Health and Family Welfare Department, dated 01.04.2009, should not have been construed in such a way as the 2nd respondent construed in this case. The case of the petitioner is entirely different and her request for employment assistance on compassionate ground ought to have been considered by the 2nd respondent compassionately.

10. The learned counsel would further submit that after the death of the Government servant - MR.K.Uthirapathy, his family nominated Mr.U.Bharathiraja for employment on compassionate ground and accordingly, he made an application on 02.11.2006 in this regard, but, unfortunately, before his turn could reach, he died on 05.01.2014 due to illness and as such, the petitioner made an application on 05.03.2014 immediately after the death of her brother seeking employment assistance for her on compassionate ground.

11. Therefore, according to the learned counsel, the request of the petitioner ought not to have been rejected on ground of delay and that originally employment assistance was sought for on compassionate ground to her brother on 02.11.2006, but, when he died on 05.01.2014 suddenly before his turn for employment could reach, the petitioner made an application seeking for employment assistance to her on compassionate ground on 05.03.2014 in the place of his brother. The time limit cannot be reckoned from the date of her application and it should have been reckoned from the date of original application submitted by her brother. Thus, according to the learned counsel there is no delay at all. The learned counsel, would, therefore, prays this court that considering the peculiar facts and circumstances involved in this case, the respondents 1 and 2 may be directed to provide for an employment assistance to the petitioner on compassionate ground.

12. Mr.V.Jayaprakash Narayanan, the learned Special Government Pleader, who takes notice for the respondents, would stoutly oppose this writ petition. According to him, the impugned order came to be

passed in accordance with law and in the light of the Government Orders and that the same do not warrant interference at the hands of this court.

13. I have considered the above submissions carefully.

14. Admittedly, earlier employment assistance was sought to the brother of the petitioner in time after the death of their father, who died, while he was in service, and in the mean while the brother of the petitioner died on 05.01.2014 before his turn for employment could reach. In this case, the father of the petitioner died on 22.07.2006 and even according to the impugned order, the applications requesting for employment on compassionate ground to one of the dependants of the deceased Government employees, who died prior to February 2002 only were considered and orders of appointments were issued. Had her brother been alive, the petitioner would not have asked for employment assistance for her on compassionate ground and taking into account the unfortunate death of her brother, the respondent ought to have considered the request of the petitioner for employment compassionately and the 2nd respondent should have not construed that there is change of nomination. Rejecting the request of the petitioner for compassionate appointment, on the ground that no change of nomination is permissible, is bad, arbitrary and illegal, particularly, in the facts and circumstances of the case.

15. The Government Orders and Instructions governing employment assistance on compassionate grounds should not be interpreted in such a manner and those instructions have been issued only to streamline the seniority of the applicants and to avoid inordinate delay in seeking employment assistance. This is a very peculiar case and the petitioner stands in a different position. The death of her brother only compelled her to seek employment assistance for her on compassionate ground and in that event, I am of the considered opinion that neither there was change of nomination on the part of the petitioner nor there was delay in seeking employment assistance as concluded by the 2nd respondent in view of the fact that while the application submitted originally for compassionate appointment for her brother was pending he died on 05.01.2014 much prior to his turn and the requests for employment assistance for the legal heirs of the deceased Government Servants, who died prior to February, 2002 were alone considered.

16. Thus, I am of the view that both the reasons stated in the impugned order for refusal of employment assistance to the petitioner on compassionate ground are unsustainable and the impugned order warrants interference at the hands of this court.

17. For the foregoing reasons, I am of the view that the petitioner is entitled for employment assistance on compassionate ground and the 2nd respondent is directed to give a suitable employment to the petitioner irrespective of the fact that she is

married or not.

18. In the result, this writ petition is allowed and the impugned order is set aside. The 2nd respondent is directed to provide a suitable employment to the petitioner on compassionate ground when her turn comes.

-Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary, Medical & Rural Development Department, Fort St. George, Chennai.
- 2.The Director of Medical and Rural Development, [Family Welfare], Chepauk, Chennai.
- 3.The Joint Director of Medical and Rural Development, [Family Welfare], Cuddalore.

+1 cc to the Government Pleader sr.34730
+1 cc to Mr.K.Vasudevan, Advocate sr.34236

W.P.No.20161 of 2015

pa(co)
aa03/09/2015

सत्यमेव जयते

WEB COPY