

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2015

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.12575 of 2012
and
MP.NO.1 of 2012

M.Sugumar

.. Petitioner

vs.

1. Corporation of Chennai
Rep. by its Commissioner
Ripon Building
Chennai - 600 003
2. Vetinarary Medical Officer
Health Department
Corporation of Chennai
Chennai-600 003

... Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the concerned records from the second respondent quash the order of the second respondent dated 1.2.2011 bearing Su.Thu.Na.Ka.No.Ka.P.A1/274/2011 and consequently direct the respondents to appoint the petitioner in the first respondent Corporation in suitable post on compassionate appointment.

For petitioner : Mr.Balan Haridas

For respondents : Mr.S.Saravanan

O R D E R

Heard the learned counsels appearing for the parties concerned.

2. This writ petition has been filed praying that this Court may be pleased to issue a writ of Certiorarified Mandamus to call for and quash the order of the second respondent, dated 1.2.2011, and to consequently direct the respondents to appoint the petitioner in the first respondent Corporation, in a suitable post, on compassionate ground.

3. The petitioner has stated that his father, G.Musaliah, was working as a bullock cart driver in the 'D' Cattle Field Health Department. He had died in harness, on 2.6.2004, leaving behind his mother, two elder brothers, the petitioner, one younger brother and two younger sisters. Due to the sudden death of the father of the petitioner, the family had lost its earning member and the entire family was in indigent circumstances. In such circumstances, the mother of the petitioner had made a representation to the second respondent, on 15.10.2004, for being appointed in a suitable post, on compassionate ground. The said request had been renewed, by way of several representations. While so, the second respondent, through his letter, dated 8.11.2010, had directed the Tahsildar, Purashawalkam, to enquire into the financial status of the family. The Tahsildar, Purashawalkam, had submitted a certificate, dated 9.12.2010, certifying about the indigent circumstances of the family of the petitioner. The Veterinary Medical Officer had also forwarded the application of the petitioner, to the General Department, for further processing. While so, the petitioner had received an order, dated 1.2.2011, from the second respondent stating that the application of the petitioner, for compassionate appointment, had been rejected, as it has been submitted, belatedly.

4. The learned counsel appearing for the petitioner had submitted that the rejection of the application of the petitioner, for being appointed on compassionate ground, by the second respondent, is arbitrary and illegal. The second respondent had not considered the fact that the mother of the petitioner had made an application, on 15.10.2004, soon after the death of the father of the petitioner. Even though all the documents required by the respondents had been furnished, the second respondent had passed the impugned order without applying his mind. The Tahsildar, Purashawalkam, had also confirmed the indigent status of the petitioner and since no orders had been passed, the petitioner had made another application, on

1.11.2010. However, there has been no delay in the filing of the application, as the mother of the petitioner had submitted her application, on 15.10.2004. Therefore, the reasons stated in the impugned order, by the second respondent, while rejecting the application of the petitioner, 1.2.2011, is liable to be set aside.

5. A counter affidavit has been filed on behalf of the first respondent denying the claims made by the petitioner in the affidavit filed in support of the writ petition.

6. It has been stated that the father of the petitioner had died in harness, on 2.6.2004. The petitioner had made an application, only on 1.11.2010, for being appointed in a suitable post, on compassionate ground. Thus, it is clear that the application submitted by the petitioner is belated in nature. As per the Government Letter No.42119/MC/3/07/2, dated 11.4.2008, the application should have been submitted, within three years from the date of the death of the employee concerned. Since the petitioner had submitted the application, after more than six years, after the death of the employee, the application is liable to be rejected, as it is belated in nature.

7. It has also been stated that, from the report of the Tahsildar, Purashawalkam, it could be noted that the petitioner is employed on an annual income of Rs.1,10,244/- and the family of the member is not in indigent circumstances. Therefore, the petitioner is not entitled to claim the appointment on compassionate ground, as prayed for by him, in the present writ petition.

8. In the reply affidavit filed by the petitioner, it has been stated that the mother of the petitioner is an illiterate lady and she is not aware of the fact that she should get an acknowledgment for having given the application, on 15.10.2004. Further, while calculating the amount of annual income of the petitioner, the pension drawn by his mother had also been taken into account. Further, the Government Letter No.42119/MC/3/07/2, dated 11.4.2008, would not automatically apply to the respondent Corporation, unless the said letter had been adopted by it. As such, the claim of the petitioner is sustainable in the eye of law.

9. The learned counsel appearing for the petitioner had relied on the following decisions in support of his contentions:

- (i) VIJAYA UKARDA ATHOR (ATHAWALE) Vs. STATE OF MAHARASHTRA & OTHERS (CDJ 2015 SC 043).
- (ii) CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD

REP. BY ITS MANAGING DIRECTOR Vs. A.PARANJOTHI (W.A.No.1157 & 1158 of 2015, dated 31.8.2015).

(iii) M.SURESHKUMAR Vs. TAMIL NADU ELECTRICITY BOARD & ANOTHER (W.P.No.25865 OF 2010, dated 24.11.2010).

10. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available and in view of the decisions cited supra, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to grant the relief, as prayed for by the petitioner, in the present writ petition.

11. It is noted that, even though the petitioner has claimed that his mother had submitted an application, for being appointed on compassionate ground, on 15.10.2004, there is no acknowledgment for the same. Further, the respondents have categorically denied the receipt of such an application.

12. It is also noted that the petitioner had submitted an application, dated 1.2.2011, for being appointed on compassionate ground. However, in the Government Letter No.42119/MC/3/07/2, dated 11.4.2008, it is made clear that an application for compassionate appointment could be submitted, within three years from the date of the death of the Government employee. Therefore, the application submitted by the petitioner, dated 1.2.2011, is belated in nature. Even otherwise, the application for compassionate appointment, submitted after a delay of over six years, cannot be considered by the respondents. Further, it has been noted, from the counter affidavit filed on behalf of the respondents, that the annual income of the petitioner was Rs.1,10,244/-. The Tahsildar concerned had also stated that the family of the petitioner is not in indigent circumstances.

13. It is also noted that the decisions relied on by the learned counsel appearing for the petitioner, cited supra, cannot be applied to the facts and circumstances of the present case, as they had arisen under certain circumstances, which are different from those of the present case.

14. In such view of the matter, this Court finds it appropriate to dismiss the writ petition. Hence, the writ petition stands dismissed. No costs. Connected M.P.No.1 of 2012 is closed.

-Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

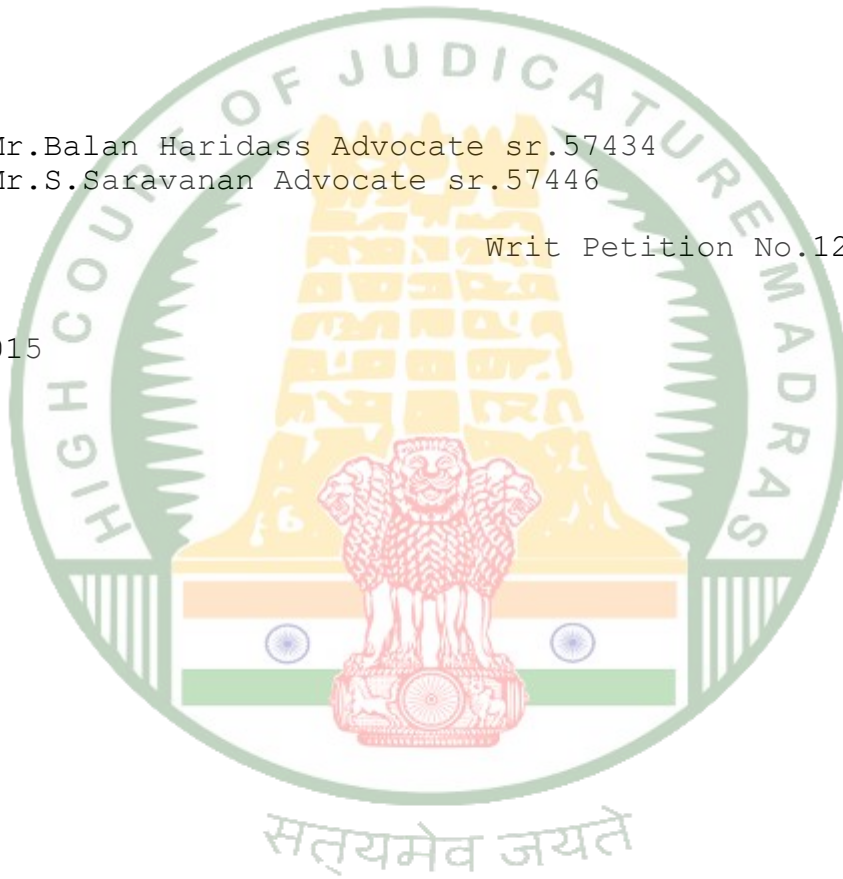
To:

1. Corporation of Chennai
Rep. by its Commissioner
Ripon Building
Chennai - 600 003
2. Veterinary Medical Officer
Health Department
Corporation of Chennai
Chennai-600 003

+1 cc to Mr.Balan Haridass Advocate sr.57434
+1 cc to Mr.S.Saravanan Advocate sr.57446

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