

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.28402 of 2011

and

MP.No.1 of 2015

M.Thenmozhi

... Petitioner

Vs

1. State of Tamil Nadu
rep. by Secretary to Government,
Agriculture Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Agriculture,
Office of the Director of Agriculture,
Chepauk, Chennai - 5.
3. The Joint Director of Agriculture,
Office of the Joint Director of Agriculture,
Salem - 5.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent herein in Letter No.ANIB6/125796/09 dated 23.09.2009 and in Letter No.OMU ANI B6/45902/11 dated 20.04.2011, quash the same and further direct respondents 2 and 3 herein to issue compassionate appointment to the petitioner.

For Petitioner : Mr.S.Subramanian

For Respondents : Mr.R.Vijayakumar,
R1 to R3 Additional Government Pleader

ORDER

By consent of both the parties, the main writ petition itself is taken up for final disposal.

2. The petitioner has come forward with the present writ petition challenging the communications of the second respondent dated 23.09.2009 and 20.04.2011 and consequently, directing respondents 2 and 3 to give compassionate appointment to the petitioner.

3. The case of the petitioner is that her father Manickam died on 22.02.1994, while in service, leaving behind him, his wife, son and daughter/petitioner herein as his legal heirs. At that time, the petitioner and her brother were minors. The mother of the petitioner made an application dated 17.12.1994 to the third respondent seeking permission to apply for compassionate appointment, as and when her children attain majority. Thereafter, the petitioner submitted an application to the third respondent in the year 1999 for compassionate appointment. However, the second respondent, by his communication dated 23.09.2009, rejected the application made by the mother of the petitioner on the ground that the application had not been made within three years from the date of death of the deceased employee. Despite the same, the petitioner made another application to the second respondent requesting to reconsider her case for compassionate appointment. However, the second respondent, by his communication dated 20.04.2011, again rejected the claim of the petitioner on the same ground that she has not made such application within a period of three years from the date of death of her father. Aggrieved over the same, the petitioner is before this Court with the present writ petition for the above stated relief.

4. Resisting the averments raised in the writ petition, the respondents filed a detailed counter affidavit inter alia stating that as per the directions in Government Letter No.202, Labour and Employment Department dated 08.10.2007, the second respondent has sent the impugned letters dated 23.09.2009 and 20.04.2011, rejecting the applications seeking compassionate appointment to the petitioner on the ground that the legal heirs of the deceased Government servant should submit such application within three years from the date of death of the Government servant. It is further stated therein that no such application dated 17.12.1994 as alleged by the petitioner, was made by the mother of the petitioner.

5. When the matter came up for hearing, learned counsel for the petitioner submits that the issue involved in this writ petition is squarely covered by the order of this Court dated 04.04.2014 in WP (MD) No.15658 of 2012. Learned Additional Government Pleader appearing for the respondents also fairly admits the same.

6. This Court, in the order dated 04.04.2014 in WP (MD) No.15658 of 2012, (S.Nagarajan v. the Superintending Engineer, Tamil Nadu Electricity Distribution Circle, Tamil Nadu Electricity Board, Maharaja Nagar, Tirunelveli - 627 002 and another), on a careful consideration of the decisions of this Court in (i)Superintending Engineer, Madurai Electricity Distribution Circle v. V.Jaya reported in (2007) 6 MLJ 1011;; (ii)J.Jeba Mary v. the Chairman, Tamil Nadu Electricity Board reported in 2011 (3) LLN 405 (Mad); and (iii)P.Sathiarman v. Secretary to Government to Government reported in (2013) 8 MLJ 190, has held as follows:

"18. The above judgment is squarely applicable to the present case. Admittedly, in the present case, the widow of the deceased has submitted the application within time and the application seeking appointment for the petitioner was submitted within 3 years after attaining majority. Nothing is brought before this Court to show that the family is not in indigent circumstances and this Court is of the opinion that the widow of the deceased must have appointed on compassionate grounds in some job based on her qualification. This Court is also of the view that when a person cannot be employed in government services before the completion of 18 years, he could not make an application seeking appointment during his period of minority. Therefore the period of three years for a minor son/daughter can commence only after he/she attains majority. Therefore, for all the reasons stated above, the application made on behalf of the son cannot be treated as time barred.

19. In the result, this writ petition is allowed and the impugned proceedings of the respondent dated 31.01.2011 is set aside. The petitioner is directed to produce a certificate from the competent authority to the effect that his family is in indigent circumstance as on today, within four weeks and submit the same before second respondent and on receipt of the same, the second respondent shall pass order appointing the petitioner in any suitable post within two weeks therefrom. No costs."

7. Following the said decision, the impugned letters dated 23.09.2009 and 20.04.2011 issued by the second respondent are quashed. The petitioner is directed to submit relevant documents with regard to her educational qualification and indigent circumstances of her family to the respondents and on such submission, the respondents are directed to consider the claim

of the petitioner for appointment on compassionate ground and pass appropriate orders, within a period of eight weeks there from.

8. The writ petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rk

To

1. The Secretary to Government,
Agriculture Department,
Fort St. George, Chennai - 600 009.
2. The Director of Agriculture,
Office of the Director of Agriculture,
Chepauk, Chennai - 5.
3. The Joint Director of Agriculture,
Office of the Joint Director of Agriculture,
Salem - 5.

+1cc to Mr.S.Subramanian, Advocate, S.R.No.57612

W.P.No.28402 of 2011

SM(CO)
CA(23/11/2016)

सत्यमेव जयते

WEB COPY