

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 11.11.2016

Delivered On: 02.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.19570 of 2016

V.Senthil

..Petitioner

vs.

1.Director, Commissioner of Survey & Settlement,  
Survey House, Chepauk,  
Chennai-600 005.

2.Additional Director, Survey & Records Department,  
Survey House, Chepauk,  
Chennai-600 005.

3.Assistant Director, District Survey Office,  
Kancheepuram, Kancheepuram District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned letter in Na.Ka.No.1/9729/16 (Ni.A.) dated 27.04.2016 issued by the first respondent and quash the same and direct the first respondent to reconsider afresh the application of the petitioner for appointment on compassionate grounds.

For Petitioner : Mr.A.P.Peter Gunasekaran

For Respondents : Mr.N.Srinivasan,  
Additional Government Pleader

O R D E R

The Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the letter in Na.Ka.No.1/9729/16 (Ni.A.) dated 27.04.2016 issued by the first respondent and direct the first respondent to reconsider afresh the application of the petitioner for appointment on compassionate grounds.

2. The petitioner's father, namely K.Venkatasubramanian, was working as Firka Surveyor under the third respondent at Thirukazhukundran and while he was in service, died on 09.01.2008, leaving behind his mother Tmt.Meenatchi, his elder brother V.Suresh, himself and his younger sister V.Jeevitha. The petitioner is a B.E.Computer Science Engineer and has also passed M.Tech- Information Technology. Since his mother was an illiterate, after the death of his father, she submitted an application to the third respondent on 11.12.2008 seeking appointment to the petitioner's sister V.Jeevitha on compassionate ground and at that time the petitioner was undergoing Engineering Course. However, the third respondent informed the petitioner after two years that since his sister V.Jeevitha is only 13 years old, she is not eligible for appointment on compassionate ground. Thereafter the petitioner sister sent representation to the Chief Minister Cell stating that since she is going to marry, compassionate appointment can be provided to his brother, who is the petitioner herein. When the said petition was forwarded to the third respondent, it was rejected, vide order dated 28.12.2015 stating that since the said V.Jeevitha was married, she cannot be considered for compassionate appointment. Further, the request of the petitioner's sister to provide compassionate appointment to the petitioner herein was also declined. However, in the concluding portion of the order, it has been noted that if the petitioner approaches the respondent directly seeking compassionate appointment, the same will be considered as per rules, provided he fulfills eligibility criteria. Therefore, the petitioner submitted a representation to the respondents 1 and 2 dated 12.01.2016 seeking appointment on compassionate ground in the place of his sister. Since it was not considered, he filed W.P.No.6828 of 2016 and this Court, vide order dated 25.02.2016 directed the first respondent to consider the petitioner's representation dated 12.01.2016. Pursuant to the order passed by this Court in W.P.No.6828 of 2016, the first respondent passed orders on the petitioner's representation dated 12.01.2016, rejecting the petitioner's request on the ground that the application was not made within three years from the date of death of the Government servant. Challenging the same, the present writ petition is filed.

3. When the matter is taken up for consideration, learned counsel appearing for the petitioner by adverting to the averments made in the affidavit would contend that the application for compassionate appointment for his sister V.Jeevitha was submitted in time on 14.07.2010 i.e, well within the period of three years from the date of death of the Government servant and since it was rejected, the petitioner submitted application in the year 2016 and therefore, the impugned order rejecting the petitioner's request is unsustainable. The learned counsel appearing for the petitioner relied on a judgment of this Court in Mohanambal v. The Director, Land and Survey Department, Kancheepuram and

Others [2011 (1) CTC 349] and would submit that in an identical situation, this Court has given direction to the respondent to consider the claim of the petitioner therein and by applying the principle laid down in the said judgment, prays for similar orders.

4. Per contra, Mr.N.Srinivasan, learned Additional Government Pleader appearing for the respondent had filed a detailed counter affidavit and would submit that the petitioner's mother made an application dated 10.12.2008 to provide employment to her daughter V.Jeevitha and the third respondent, vide memo dated 05.07.2010 instructed the mother of the petitioner herein to submit 16 documents including the application of V.Jeevitha and subsequently, the third respondent examined the application dated 14.07.2010 and rejected the application, vide memo dated 10.11.2010, stating that she had not attained 18 years of age on the date of submission of application. Thereafter on 12.01.2016, the petitioner had submitted an application to consider his request for appointment as he possessed the requisite educational qualifications and since it was not considered, he filed W.P.No.6828 of 2010 and pursuant to the direction issued by this Court, the first respondent considered his representation and rejected his claim on the ground that he has not submitted application for appointment on compassionate ground within 3 years from the date of death of the deceased Government servant and the application was submitted by the petitioner to the third respondent only on 12.01.2016 i.e., after 8 years from the date of death of his father and hence the request of the petitioner cannot be considered as per the guidelines issued by the Government in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 and Government Letter No.(MS).No.86/Q1/2010, Labour and Employment Department dated 04.05.2010. Thus, the learned Special Government Pleader sought for dismissal of this writ petition.

5. Keeping the submissions made on either side, I have gone through the entire materials available on record.

6. Admittedly, the petitioner has applied for compassionate appointment only on 12.01.2016, i.e., 9 years after the death of his father and furthermore, at the time of the death of his father, the petitioner was studying Master Degree and at that time itself, the petitioner was a major and in spite of applying for his younger sister, who was 13 years old, the petitioner should have applied for compassionate appointment for himself since he has completed the Engineering degree as early as in the year 2006 itself or at least should have approached for compassionate appointment as soon as he completed the Master Degree in the year 2012. Whereas the petitioner has submitted his application after 9 years from the date of death of his father, which would also show that the family was able to survive for 9 years after the demise of his father. Hence, the decision relied on by the learned



counsel appearing for the petitioner will not be applicable to the present case, as in that case, the petitioner therein was the only legal heir and however, in the case on hand, the petitioner was one of the legal heirs. Reference could be made to the judgment of the Division Bench of this Court in *The Inspector General of Prisons, Tiruchirapalli District v. P.Marimuthu* [2016 (5) CTC 125]. The relevant portion of the judgment reads as follows:

"38. Needless to state that for entry into service in the State, the minimum age is 18 years and no minor can be appointed to any service. Therefore, he cannot make any Application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the Recruitment Rules. Employment Assistance on Compassionate Appointment, is only a concession, extended to an eligible member of the family; to apply for a suitable post, in the service, in which, the Employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the Department, while examining the request of an Applicant for appointment on Compassionate grounds. Reading of the Government Orders shows that Scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide Employment Assistance as and when the son or daughter of the deceased Employee attains majority. Under the Scheme, the Department is not obligated to keep any post vacant, till the Applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death."

In the above cited judgment, it has been held that the Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death. In the case on hand, sister of the petitioner had earlier submitted application for compassionate appointment and since it was rejected, the petitioner has chosen to submit an application, that is after 9 years from the date of death of his father. Hence, I do not find any merit in this writ petition.

7. In the result, this Writ Petition is dismissed. No costs.

jvm

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Director, Commissioner of Survey & Settlement,  
Survey House, Chepauk,  
Chennai-600 005.
  - 2.The Additional Director, Survey & Records Department,  
Survey House, Chepauk,  
Chennai-600 005.
  - 3.The Assistant Director, District Survey Office,  
Kancheepuram, Kancheepuram District.
- + 1 cc to Mr.A.P.Peter Gunasekaran, Advocate Sr 71370  
+ 1 cc to The Govt. Pleader, Sr 71649

KR/20/1/17

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