

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 27.09.2016)

DATED : 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.8831 of 2013

P.Kumaresan ... Petitioner

Vs.

1.The Principal Secretary,
Revenue Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

2.The District Collector,
Tiruvallur District,
Tiruvallur. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in Na.Ka.No.4769/2006/A1, dated 23.03.2012, passed by the 2nd respondent and to quash the same as unsustainable in law and subsequently, to direct the respondents to appoint the petitioner to the post of Office Assistant in the Office of the 2nd respondent / Village Administrative Office on compassionate grounds.

For Petitioners : Mr.K.Gajendran

For respondents : Mr.S.Gunasekaran, AGP

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 2nd respondent in Na.Ka.No.4769/2006/A1, dated 23.03.2012, and to quash the same as unsustainable in law, and consequentially, to direct the respondents to appoint the petitioner to the post of Office Assistant in the Office of the 2nd respondent / Village Administrative Office, on compassionate grounds.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows—

The petitioner's father Palayam was working as Village Assistant in Alapakkam Village since 01.01.1997. While in service, on 25.04.2009 the petitioner's father suffered a massive cardiac arrest and despite resuscitation measures, he died in harness, leaving behind him his wife, his three daughters and one son (petitioner herein) as legal heirs. No legal heirs of his father, including the petitioner, is employed gainfully. The petitioner is doing manual labour and with his meager income, it is very difficult for him to make both ends meet and take care of the family. Hence, the petitioner had given a representation to the 2nd respondent on 22.06.2009, requesting to provide him compassionate appointment. The petitioner has also produced the No Objection Letters from his sisters, for his compassionate appointment. But, the said representation was not considered by the 2nd respondent. Thereafter, the petitioner has made many representations to the 2nd respondent. Finally, after three years, the 2nd respondent sent a letter dated 16.02.2012 directing the petitioner to appear for a personal interview along with his original certificates. The petitioner has also attended the interview before the 2nd respondent. But, to his shock and surprise, on 23.03.2012, the petitioner received a communication from the 2nd respondent stating that his application for employment on compassionate ground has been rejected on the ground that on the date of death of his father, the petitioner was aged 36 years, which is above the upper age limit prescribed for such appointment in G.O.Ms.No.9, Labour and Employment (Rt) Department (Q1), dated 19.01.1998. Challenging the impugned rejection order dated 23.03.2012 passed by the 2nd respondent, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the request of the petitioner for compassionate appointment was rejected by the respondents stating that on the date of death of his father Palayam (Govt Servant), the petitioner was aged 36, as such he is over-aged for compassionate appointment as per the Government Order in G.O.Ms.No.9, Labour and Employment (Rt) Department (Q1), dated 19.01.1998. In this regard, it is submitted by the learned counsel appearing for the petitioner that the petitioner belongs to Schedule Caste Community. The Government of Tamil Nadu, Labour and Employment Department, by letter No.46571/N1/82-3, dated 24.11.1982, has clarified the question of age relaxation in the case of Schedule Caste and Scheduled

Tribe stating that the dependents of the deceased Government servants, belonging to the SC/ST Community, can be appointed on compassionate ground in relaxation of age rule even if they exceed the age limit prescribed in the Special Rules, when it is more beneficial to the individual. Thus, by relying upon the said Government Letter, dated 24.11.1982, the learned counsel for the petitioner submitted that the impugned rejection order passed by the 2nd respondent is liable to be set aside. Thus, he sought for a direction to the respondents to provide compassionate appointment to the petitioner, by giving relaxation to the age limit.

4. Heard the learned Additional Government Pleader also and perused the materials available on record.

5. It is seen that Rule 5 (1) of the Special Rule for Tamil Nadu Basic Services prescribes the age limit as 35 years in respect of the Schedule Caste and Schedule Tribe, for appointment in the posts in Classes III & IV. However, the Government of Tamil Nadu, Labour and Employment Department, by letter No.46571/N1/82-3, dated 24.11.1982, has clarified the question of age relaxation in the case of Schedule Caste and Scheduled Tribe stating that the dependents of the deceased Government servants, belonging to the SC/ST Community, can be appointed on compassionate ground in relaxation of age rule even if they exceed the age limit prescribed in the Special Rules, when it is more beneficial to the individual. Under such circumstances, as contended by the learned counsel for the petitioner, when there is a specific provision for relaxation, the respondents have to consider the above said relaxation provision as per the Government Order. Further, the petitioner belongs to Schedule Caste and as such, he can claim age relaxation in the light of the above cited Government Letter dated 24.11.1982. Under such circumstances, the impugned order rejecting the claim of the petitioner for compassionate appointment on the ground of over- aged, is not legally sustainable.

6. Hence, the impugned order dated 23.03.2012 passed by the 2nd respondent is quashed and this Court directs the 2nd respondent to pass appropriate orders, in respect of providing appointment to the petitioner on compassionate ground, by giving age relaxation, in the light of the Government Letter No.46571/N1/82-3, dated 24.11.1982, Labour and Employment Department, within a period of four weeks from the date of receipt of a copy of this order.

With the above terms, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To,

1.The Principal Secretary,
Revenue Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

2.The District Collector,
Tiruvallur District,
Tiruvallur.

+1cc to Mr.K.Gajendran, Advocate Sr.59833

+1cc to the Government Pleader sr.60531

W.P.No.8831 of 2013

srg 26/10/2016

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