

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 20208 of 2016

and

WMP. No. 17382 of 2016

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M. Kannan

.. Petitioner

Versus

- 1.The Commissioner
Directorate of Agriculture
Chepauk, Chennai -600 005
2. The Director
O/o.Tamilnadu Agricultural Marketing & Agri Business
Directorate
Thiru.Vi.Ka.Industrial Estate
Guindy, Chennai - 600 032
3. The Director
O/o.The Agricultural Marketing Department
Salem - 636 040.
4. The Assistant Director
The Agricultural Marketing Department
Salem - 636 007

.. Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order in Letter No.ANiB6/71681/2011 dated 20.12.2013 issued by the 2nd respondent and to quash the same, consequently direct the 1st respondent to pass an order of appointment on compassionate grounds in favour of the petitioner.

For Petitioner : Mr.Nathan and Associates

For Respondents : Mr.P.Chinnathurai
Government Advocate

ORDER

The petitioner challenges the order dated 20.12.2013 of the second respondent by which the petitioner's claim for appointing him on compassionate grounds in any suitable post was rejected.

2. The petitioner would state that his father was employed as Watchman in the Agricultural Marketing Department in Salem and during the course of such service, he passed away on 13.11.1975. According to the petitioner, his father has left behind him his wife, four daughters and two sons as his legal heirs. At the time of his father's death, the petitioner was five years old. After the death of his father, the whole family starved to meet both ends. It is further stated that the eldest son Krishna has abandoned the family and the entire burden of maintaining the family rest on the shoulders of the petitioner. The petitioner's mother said to have submitted a representation dated 01.01.1991 to the Chief Minister's Grievance Cell seeking appointment on compassionate grounds to any one in the family. At that time, the petitioner was a minor and therefore, the application was submitted by the mother of the petitioner. In response, the fourth respondent, by a communication dated 12.12.1996 called upon the mother of the petitioner to submit a No Objection Certificate from the other members of the family. Thereafter, on 15.04.1998, the fourth respondent, by his communication dated 15.04.1998 recommended to the Sales Director (Agriculture) to consider the request of the petitioner's mother for appointment of any one of the family members on compassionate grounds. As there was no response, the petitioner, on attaining majority, sent a letter dated 14.05.1999 to the respondents by enclosing relevant documents in support of his claim for appointing him on compassionate grounds. On 27.12.1999, a letter was sent by the fourth respondent to the third respondent requesting to send relevant documents for consideration of the claim of the petitioner on or before 20.01.2000. In the meantime, it came to light that the brother namely Krishnan was employed as Watchman in the District Court, Salem. Therefore, by a communication dated 11.11.2002 of the first respondent, addressed to the petitioner, it was informed that already the petitioner's brother in law was employed in Government service and therefore, the claim of the petitioner cannot be considered. In spite of such reply, the petitioner continued to send representation to the Chief Minister's Grievance Cell for which also, by a communication dated 08.02.2010, he was informed that the request made by the petitioner for appointment on compassionate grounds cannot be considered. In that communication dated 08.02.2010, it was also informed that an application has not been submitted within a period of three years from the date of death of the deceased Government servant. Challenging the order dated 08.02.2010, the

petitioner has filed WP No. 13487 of 2011 before this Court and for a consequential direction to direct the respondents to appoint him in any suitable post on compassionate grounds in the Agricultural Marketing Department. By order dated 16.08.2013, this Court directed the first respondent to reconsider the claim of the petitioner for appointment on compassionate grounds afresh. On receipt of a copy of the order dated 16.08.2013 in WP No. 13487 of 2011, the petitioner has submitted a representation dated 05.11.2013 and requested to comply with the order passed by this Court. Thereafter, the first respondent has passed the impugned order on 20.12.2013, rejecting the request of the petitioner.

3. The learned counsel for the petitioner would contend that the petitioner's brother Krishnan, who was employed in District Court, Salem as Watchman has abandoned the family of the petitioner and therefore, his appointment as Watchman cannot be put against the petitioner to deny him employment on compassionate grounds. The fourth respondent has earlier recommended to appoint the petitioner on compassionate grounds as per his letter dated 29.11.2006. The first respondent also rejected the claim of the petitioner as belated without considering the repeated representations made by the mother of the petitioner seeking compassionate appointment at the earlier point of time when the petitioner was a minor. In the order dated 16.08.2013 passed in WP No. 16487 of 2011, this Court, relying on the decision of the Division Bench of this Court in WA (MD) No. 1367 of 2011 dated 22.03.2012, held that the question of submitting application within three years does not arise when at that time, the applicant was a minor. Therefore, the learned counsel for the petitioner submitted that as the petitioner was a minor at the time of his father's death on 13.11.1975 and after attaining majority, the petitioner's mother has submitted an application on 01.01.1991, the respondents are not justified in rejecting the claim of the petitioner on the ground of delay.

4. The learned Government Advocate appearing for the respondents would oppose the writ petition by stating that the scheme of appointment on compassionate grounds provides for only one appointment on compassionate grounds to a member of the family. In the present case, admittedly, the petitioner's brother Krishnan was working as Watchman in District Court, Salem. Further, the family of the petitioner could survive all these years for about 35 years after the death of the government servant on 13.11.1975. While so, the first respondent is wholly justified in rejecting the claim of the petitioner not only on the ground of delay in submitting the application seeking appointment grounds but on considering the fact that the petitioner's brother is already employed in Government service. The learned Government Advocate therefore prayed for dismissal

of the writ petition.

5. I heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents. Admittedly, the petitioner's father died on 13.11.1975 leaving behind the family of the petitioner consisting of his wife and six children. One among the children namely Mr. Krishnan was employed as Watchman in District Court, Salem. This is not disputed by the petitioner. It is also an admitted fact that within three years from the date of death of the deceased government servant, an application seeking appointment on compassionate grounds has not been submitted by the family members.

6. In the impugned order, reference was made to the fact that at the time of the death of the government servant, as per the legal heir certificate dated 22.03.1976, the daughter of the deceased namely Mrs. Rajamani was 21 years. One another daughter namely Ms. Rajam was aged 19 years. Further, the mother of the petitioner was aged 45 years at the time of death of the deceased government servant. They could have very well submitted an application seeking compassionate grounds at the earliest point of time, but they did not do so. It is not as though the petitioner was the only son born to the deceased and his wife and therefore, he submitted an application after attaining majority. When other members of the family, who are admittedly attained majority, at the time of death of the government servant, they could have very well applied for appointment on compassionate grounds. This was rightly pointed out by the first respondent in the impugned order. There is no reason assigned by the petitioner for not submitting such an application by other eligible legal heirs at the time of death of the deceased government servant.

7. Admittedly, the scheme for appointment on compassionate grounds provides for appointment of any one of the eligible family members. In the present case, admittedly, the petitioner's brother is already employed as a Watchman in District Court, Salem. While so, the petitioner cannot be considered for appointment on compassionate grounds. In fact, in the writ petition filed by the petitioner in WP No. 13487 of 2011, this Court issued a direction to the first respondent to reconsider the claim of the petitioner for appointment on compassionate grounds. After such direction issued by this Court, the first respondent has considered the claim of the petitioner and rejected it on merits. As rightly pointed out by the learned Government Advocate, after the death of the government servant, four decades have passed and the family of the petitioner could survive all these days. While so, at this point of time, if the claim of the petitioner is entertained, it will be contrary to the statutory spirit with which the scheme

for appointment on compassionate ground is enacted by the Government. In such view of the matter, I do not find any reason to interfere with the order passed by the first respondent.

8. Before parting with, it is necessary to mention that after the first respondent rejected the claim of the petitioner, on the one hand, he filed the present writ petition challenging the order dated 20.12.2013. On the other hand, the petitioner has sent a threatening letter on 16.07.2014 addressed to the respondents stating that if his claim for appointment on compassionate ground is not considered, he will set himself ablaze before this Court. Such an attitude on the part of the petitioner has to be deprecated.

9. In the light of the above conclusion, this Court finds no merit in the writ petition. The writ petition is therefore dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

arr/rsh

To

1. The Commissioner,
Directorate of Agriculture,
Chepauk, Chennai-600 005.
 2. The Director,
O/o. Tamilnadu Agricultural Marketing & Agri Business
Directorate,
Thiru. Vi. Ka. Industrial Estate,
Guindy, Chennai- 600 032
 3. The Director,
O/o. The Agricultural Marketing Department,
Salem-636 040.
 4. The Assistant Director,
The Agricultural Marketing Department,
Salem-636 007.
- +1 cc to Government Pleader sr 34947

WP No.20208 of 2016

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