

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.2112 of 2016

R.Rajarathinam

... Petitioner

vs.

1. The District Collector,
Krishnagiri District,
Krishnagiri.

2. The Assistant Director,
(Panchayats)
Krishnagiri.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorarified mandamus calling for the records relating to the impugned proceedings passed in Na.Ka.No.K2/28960/2015, dated 12.11.2015 on the file of the 1st respondent herein, quash the same and consequently direct the respondents herein to provide employment under compassionate grounds to the petitioner within a stipulated period.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the impugned proceedings passed by the 1st respondent in Na.Ka.No.K2/28960/2015, dated 12.11.2015 and for a consequential direction to the respondents herein to provide him employment under compassionate grounds, within a stipulated period.

2. According to the petitioner, his father, who joined the services of the 2nd respondent Office on 05.06.1985 and worked there as an Office Assistant, died on

17.04.2015, while in service, leaving behind his wife Lakshmi, his daughter Neela and his son, the petitioner herein, as his Legal Heirs. The petitioner studied upto X standard and he belongs to Scheduled Caste Community. Since his family is in indigent circumstances, the petitioner by way of a representation dated 05.10.2015 requested the respondents to provide him employment on compassionate grounds. He also enclosed requisite Certificates, i.e. his father's Death Certificate, his Birth Certificate, School Transfer Certificate, X Standard Mark Sheet, Legal Heirship Certificate, Composite Certificate recommending appointment by Tahsildar, etc. But, the 1st respondent vide proceedings dated 12.11.2015 rejected the petitioner's request stating that he is over-aged and is not eligible for appointment. Aggrieved by the same, the petitioner is before this Court.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. When the matter is taken up for consideration, learned counsel for the petitioner relying on a judgment dated 23.08.2011 passed by this Court in W.P.No.6082 of 2011, submitted that the respondents may be directed to consider the petitioner's representation seeking compassionate appointment in the light of the said judgment.

5. Learned Special Government Pleader, by filing a detailed counter, submitted that the petitioner has attained 37 years as on the date of submission of his representation seeking compassionate appointment and as such, he has crossed the prescribed ceiling of age for appointment on compassionate grounds and hence, he is not eligible for such appointment as per the Government Order vide G.O.(Ms) No.9, Labour and Employment (Q-I) Department, dated 19.01.1998.

6. For better appreciation of the case, relevant portion of the judgment dated 23.08.2011 passed by this Court in W.P.No.6082 of 2011, is extracted hereunder:

"8. As rightly contended by the learned counsel for the petitioner, in view of G.O.Ms.No.9, Labour and Employment Department, dated 19.01.1998, the upper age limit was enhanced from 30 to 35 years. Furthermore, the Division Bench of this Court in paragraph 6 of the judgment has held that one person by name R.R.Chandrasekaran, who was 38 years, was given compassionate appointment by giving relaxation, as he belonged to Scheduled

Caste. The said judgment is squarely applicable to this case.

9. In view of the judgment of this Court dated 27.10.2005 passed in W.P.No.744 of 2003 directing the respondents to provide compassionate appointment, while quashing the impugned order therein, the impugned order dated 30.06.2010 of the second respondent is quashed. The second respondent is directed to provide compassionate appointment to the petitioner, within a period of six weeks from the date of receipt of a copy of this order."

7. Further, it is seen that a Division Bench of this Court by an order dated 27.10.2005 in W.P.No.744 of 2003 [C.Jayapal vs. The Director of Medical Education, Chennai] has discussed about the clarification pertaining to age relaxation in the case of Scheduled Caste and Schedule Tribe. Relevant portion of the Clarification in the Government Order, is extracted thus:

"5. We have already observed that the applicant belongs to Scheduled Caste community. The Government of Tamil Nadu, Labour and Employment Department, by letter No.46571.N1/82-3, dated 24.11.1982, clarified the question of age relaxation in the case of Scheduled Caste and Scheduled Tribe as under:

"2. The Government have examined the above points and issued the clarifications as follows:

(i) The dependents of deceased Government Servants (belonging to Scheduled Caste/Scheduled Tribe) can be appointed on compassionate grounds 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. "Though the existence of the said instruction is not disputed, the fact remains, the respondents have not considered the relevant fact that in the case of appointment on compassionate ground, the age limit prescribed in the Special Rules can be relaxed if the applicant belongs to SC/ST. As per G.O.No.1579, dated 21.07.1981, the maximum age as far as son and daughter is concerned is 30 and widow of the deceased is 31 years, in the case of employment on compassionate ground. In the

letter dated 11.03.1982, the Government of Tamil Nadu has clarified that on the date of death of Government servant, the age of son or daughter/widow should not be more than 30/40 years. In G.O.Ms.No.155 L & E, dated 16.07.1993, in para 3, it is stated that when a dependent of the family is employed, the factors to be ascertained are, whether he is a regularly employed and is already supporting the family; if the person was employed even before the death of the Government servant and was living separately without extending any help to the family, then the case of other eligible dependent should be considered."

8. In view of the above, this Court is of the view that the impugned order dated 12.11.2015 passed by the 1st respondent is liable to be quashed. Hence, following the ratio laid down in the above judgments, i.e. in W.P.No.744 of 2003 and W.P.No.6082 of 2011, the impugned order dated 12.11.2015 passed by the 1st respondent herein is quashed. The 1st respondent is directed to provide compassionate appointment to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed with the above direction. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To:

1. The District Collector,
Krishnagiri District, Krishnagiri.
2. The Assistant Director,
(Panchayats), Krishnagiri.

1 cc to Mr.K. Goviganesan, Advocate, Sr. 68264

1 cc to Government Pleader, SWr. 68365

W.P.No.2112 of 2016

RJ (CO)

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