

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.11824 of 2012
and M.P.No.2 of 2012

K.Alexander

.. Petitioner

Vs

- 1.The Government of Tamil nadu,
Rep.by its Secretary,
Labour & Employment,
Secretariat, Fort St.George,
Chennai 600 009.
 - 2.The Director cum Special Commissioner,
Labour, Employment & Training Department,
Guindy, Chennai 600 032.
 - 3.The Commissioner,
Employment & Training, Chempauk,
Chennai 600 005.
 - 4.The Principal,
Government Industrial
Training Institute,
Nagapattinam.
- ... 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 in connection with i) Na.Ka.No.4552/A1/07 dated 17.12.2007 and ii) Na.ka.No.4552/A1/06 dated 05.01.2011 on the file of 4th respondent and quash the same and consequently direct the respondents to grant appointment to the petitioner on compassionate grounds to any of the eligible post within a stipulated time based on the recommendations of 4th respondent dated 08.04.2008 and 16.10.2008.

For Petitioner : Mr.T.Aanathi
For Respondents : Mrs.M.E.Raniselvam
Addl.Govt. Pleader.

O R D E R

The petitioner's father while working at the 4th respondent Office as Assistant Instructor, died in harness on 12.01.1990 leaving behind his wife and three daughters and two sons as his surviving legal heirs. The petitioner is the younger son of

late.Kathayan. Pursuant to the death, the petitioner's mother had given a representation dated 20.01.1990 to the 4th respondent. The respondent had not acted upon the representation in view of the ban against the compassionate appointment. Subsequently, the petitioner had given a representation dated 04.04.2002, seeking compassionate appointment for himself. By an order dated 17.02.2007, the fourth respondent has informed the petitioner that the claim was time barred. Challenging the said order, the petitioner is before this Court.

2. Heard Mr.T.Aananthi, learned counsel appearing for the petitioner and Mrs.M.E.Raniselvam, learned counsel appearing for the respondents 1 to 4.

3. The only ground on which, the petitioner's claim for compassionate appointment was rejected is that the claim is time barred. Admittedly, the petitioner's mother's application seeking for compassionate appointment was made on 20.01.1990. The fourth respondent has not disputed the receipt of this application.

4. It is well settled law that if the original application has been made by one of the legal heirs, within a period of three years and the same is kept pending by the fourth respondent, then the subsequent application seeking compassionate appointment on the ground that belated is untenable.

5. The learned counsel appearing for the petitioner would rely upon the Judgment of the Hon'ble Supreme Court reported in (2006) 9 Supreme Court Cases 195, Syed Khadim Hussain vs. State of Bihar and Others, wherein it has been held as follows:

"5.We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application, he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependants are minors and there would be any relaxation of age in case they did not

attain majority within the prescribed period for submitting application.

6. As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstance of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time atleast within a period of three months. The appeal is displaced of in the above terms. No costs."

The above proposition squarely applies to the case of the petitioner. In view of the settled law that one of the legal heirs' application seeking for compassionate appointment made, within a period of three years the subsequent application could be entertained as if the same is within time. I do not find any merits in the impugned order passed by the respondent and accordingly, the impugned order is set aside.

6. Consequently, the petitioner is permitted to submit a fresh representation seeking for compassionate appointment within a period of two weeks from the date of receipt of a copy of this order and on receipt of such representation, the first respondent shall pass orders appointing him to a suitable post, without reference to delay. The above said exercise shall be completed within a period of eight weeks, thereon.

Accordingly, this petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

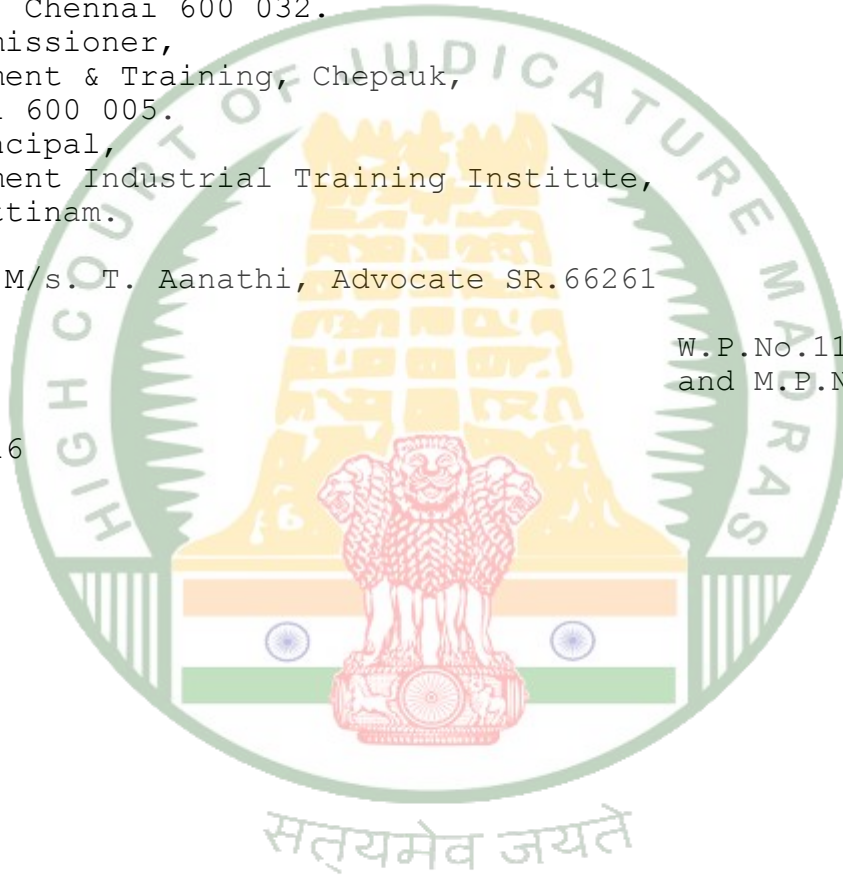
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To

- 1.The Secretary,
The Government of Tamil nadu,
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 - 2.The Director cum Special Commissioner,
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 - 4.The Principal,
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Nagapattinam.
- + 1 cc to M/s. T. Aanathi, Advocate SR.66261

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NR(CO)
Eu 25.11.16



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