

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.14758 of 2010

& M.P.Nos.1 & 2 of 2010

K.Sankar .. Petitioner

vs.

- 1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.
2. Secretary to the Government,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 600 009.
3. Zonal Officer, Zone III,
Corporation of Chennai, Pulianthope,
Chennai - 600 012. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records and quash the order No.Po.Thu.NNa.KA.E-11/4803/08, dated 20.05.2008, issued by the respondent and consequently direct the respondents to appoint the petitioner on compassionate basis to any post in any section commensurate to the petitioner's qualification.

For Petitioner : Mr.Johnselvaraj
For Respondents : Mr.P.V.Selvakumar

O R D E R

The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus to call for the records and quash the order No.Po.Thu.NNa.KA.E-11/4803/08, dated 20.05.2008, issued by the respondent and consequently direct the respondents to

appoint the petitioner on compassionate basis to any post in any section commensurate to the petitioner's qualification.

2. The case of the petitioner is that the petitioners father who was employed as Malaria decilting thozhilali, in Zone I for the respondent corporation, had died on 25.08.1986, while he was in service. Thereafter, the petitioner's mother who have also been employed as Sweeper in Division 43, Unit IX, Zone III was also died on 15.08.1990, while she was in service. The petitioner's date of birth is 10.05.1979, at the time of the death of his father, he was only 7 years and at the time of death of his mother, he was 11 years old. Therefore, obviously, the petitioner along with his younger brother became helpless and they were brought alone without any support for their livelihood.

3. The petitioner and his younger brother were residing at their aunt house for some years and on attaining majority the petitioner had submitted the application to the respondent corporation on 17.06.1998 seeking appointment on compassionate ground in any post in commensurate with the Educational Qualification (i.e., 7th standard) of the petitioner. Though the said application was made on 17.06.1998 for appointment, after a decade the same has been rejected by the respondent corporation on 20.05.2008. Wherein, the respondent has stated that within 3 years from the death of government servant, application for compassionate ground should have been made. Since the petitioner submitted application beyond the period of 3 years, as per the Government Rule, the application has to be rejected, accordingly it was rejected. As against the said order dated 20.05.2008, the petitioner has come up with the present Writ Petition with aforesaid prayer.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would contend that both the father and mother of the petitioner had worked only at the respondent corporation in menial service. While they were working, both the father and mother died one after another in the year 1986 and 1990 and at the time of death of the petitioner's father, the petitioner was only 7 years old and at the time of the death of his mother, he was 11 years old. Since both father and mother died suddenly leaving the petitioner and his younger brother without any support in the family and life, they had to be with their aunt for survival and only because of that the petitioner was not in a position to continue his studies beyond 7th standard. Thereafter, on attaining majority application for compassionate ground appointment was made by the petitioner in the year 1998, which was kept pending by the 1st respondent for 10 years and

ultimately rejected the same by virtue of the impugned order and therefore it is totally unjustifiable.

6. The learned counsel would further contend that even the 3 year Rule as has been envisaged in government order i.e., G.O.Ms.No.120, Labour and Employment-I, Department, dated 26.06.1995, has been clarified and in view of that clarification, the government servant who died on or after 26.06.1995, in that case only their legal heirs would be considered for compassionate appointment, beyond the 3 years period. In this case both the petitioner's father and mother, died in the year 1986 and 1990, respectively. Therefore, the cut of date is 26.06.1995, hence even the 3 year rule would not be made applicable. Further the learned counsel submits that since the petitioner was minor at the time of death of his father and mother and even after 3 years, the petitioner did not attain majority, there was absolutely no scope for making application within 3 year period. The earliest possible time for the petitioner to make application is only on his attaining of majority, which the petitioner has rightly done. In respect of the above said factors, the respondent after having receipt of the application of the petitioner, after 10 years have passed the impugned order cryptically without any plausible reason. Hence, the same is liable to be interfered.

7. Per contra, the learned Special Government Pleader appearing for the respondent corporation as well as the Government would contend that the 3 years Rule is valid, in all cases of compassionate appointment. Clarification given in G.O.Ms.No.120, Labour and Employment-I, Department, dated 26.06.1995 has been further clarified by the Government in the letter Ms.No.202, dated 08.10.2007, whereby the Government has clarified that in view of the observations made in several cases by the Hon'ble Supreme Court, in so far as the applications for compassionate appointment made after 10 years, 20 years and even 30 years from the date of death of the Government servant, it would obviously show that the family cannot be considered to be in any indigent circumstances. Therefore in view of the said position, the Government has clarified in the said letter that the 3 years period with the cut of date i.e., 26.06.1995 for making application on compassionate appointment would also be applied to the Government servant who died even prior to 26.06.1995. The letter says the applicability of the clarification was only for the past cases, which cover the period of 3 years only and not for the infinite period.

8. The learned Special Government Pleader by relying these Government clarification has contended that even the Government servant who died prior to the cut of date i.e., 26.06.1995, the 3 years period would be applicable for seeking compassionate

appointment by the legal heirs. Therefore, the decision made by the respondent, rejecting the application of the petitioner for the reason that the application was made beyond 3 years period of the Government servant death, is fully justifiable and therefore he wants the dismissal of the Writ Petition.

9. This Court considered the indigent condition of the petitioner and the submission made by the learned counsel for the petitioner as well as the respondents and the materials including the records produced by the respondents for perusal.

10. It is infact an unfortunate case where the children at the age of 7 and even below who lost their father and followed by mother successively within a span of 4 years period. At the time of death of petitioner's father and mother, the petitioner was at the age of 7 and 11 years respectively. Fact remains that both father and mother of the petitioner worked only on the respondent corporation as menial servant. After the sudden death of the parents, the petitioner and his younger brother were left with out any support even for survival. Only at the mercy of their aunt, they had been surviving for some years without even continuing their studies. The petitioner discontinued the Education at 7th standard and beyond that the petitioner was not able to continue the studies. Only on attaining the majority, the petitioner had rightly made the application to the respondent corporation seeking compassionate appointment.

11. The learned counsel for the Corporation has disclosed certain interesting factors, where the Thasildar, Tondiarpet Taluk, Chennai 3, had submitted a report dated 21.11.1997, to the respondent Corporation, in response to the request made by the respondent Corporation to enquire and verify the indigence circumstances of petitioner family. The Thasildar concerned has stated in the report that the petitioner was 19 years old as on 21.11.1997, the petitioners parents died while they were working in the respondent Corporation, the petitioner had grown only at the aunt's house, the younger brother was 17 years old at that time and there is no job for the petitioner, except the funeral expenses of Rs.2,000/- paid for the petitioner mother's death, no other amount has been paid to the petitioner and his family, there is no movable or immovable property for the petitioner's parents. All those factors were came to light on the enquiry conducted by the Thasildar and therefore the Thasildar has recommended the case of the petitioner that the petitioner can be given job on compassionate ground.

12. On receipt of the said recommendation from the Thasildar, the Commissioner of the respondent Corporation (1st respondent) had written to the second respondent on 17.04.2000 stating that at the time of the death of the petitioner's

parents, both the petitioner and his younger brother were minors, therefore they did not make any application for compassionate appointment. On attaining majority, the petitioner had submitted application for compassionate appointment and in view of the Government order in G.O.Ms.No.120, dated 26.06.1995, this 3 years rule period is being followed, since the petitioner had made application after 8 years on his mother's death, whether compassionate appointment could be given to the petitioner could be clarified by the Government for appropriate action.

13. In respect of the recommendatory report submitted by the Thasildar concerned and the clarification sought for by the respondent Corporation through its commissioner, the Government has not so far given any clarification pertaining to the petitioner's case. The learned counsel appearing for the respondents would contend that the Government letter dated 08.10.2007 would be the answer for the clarification sought for by the respondent corporation and in view of the said clarification given by the Government that even for compassionate appointment for the Government servants who died prior to 26.06.1995, the 3 years period should be followed. Therefore the respondent Corporation had no option, other than to reject the claim of the petitioner.

14. The aforesaid reason is not only ingenuine but also totally unjust. A minor child at the age of 7 or 10 cannot give application to the employers seeking compassionate appointment. In this case as stated above, the petitioner and his younger brother were 10 and 7 years old at the time of mothers death and even at the time of father's death they were 7 and 4 years old. Both the parents lost their lives while they were in service in the hands of the respondent corporation. There is no contrary opinion about the penurious and indigent circumstances of the petitioner and his family as the petitioner having lost both father and mother had been struggling even for survival. However, when such an indigent person has not been considered for compassionate appointment, this Court feels that there is no other case than the one brought before in this Writ Petition can be considered as a fit case for compassionate appointment.

15. As has been rightly pointed out by the learned counsel appearing for the petitioner, the 3 years Rule is not a hard and fast rule and it can never stand as a ban or prohibition in considering the application of indigent persons, who lost their near and dear in family, i.e., father or mother, at their young age and seek appointment from the employer on attaining the majority. This Court in a judgment reported in 2010 7 MLJ 644 in M. Uma vs. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai 2 and another held that the application for the

appointment on compassionate ground shall not be rejected on the ground that it was filed after a lapse of time and the application has to be considered on its own merits. The learned Judge in the said judgment after following the number of judgments of the Hon'ble Supreme Court as well as this Court has passed the said order.

16. In G.O.Ms.No.120, Labour and Employment-I, Department, dated 26.06.1995, it has been clarified as follows:

".....2. In this connection, the District Collector, Tirunelveli Kattabommon District has sought for clarifications whether the time limit of three years period specified in the Government order are applicable to the deponents of the Government servants who died prior to the date of issue of the Government order. In this connection, it is clarified Government order first cited is applicable only to the deponents of the Government servants those who died while in service on or after 26.06.1995 and the above orders are not applicable to the past cases.

Further the Government clarify that the age limit of 50 years for appointment under the scheme in the case of widows as ordered in the said government order is also applicable only to the widows of the Government servants those who died on or after 26.06.1995."

17. In the said Government order, the cut of date of 26.06.1995 was given and only those who died after 26.06.1995, the 3 years period shall be made applicable. The subsequent Government letter dated 08.10.2007 cannot take away such a prohibition made by the Government through the Government order as the Government order was made under Article 161 of the constitution. It is settled law that the Government letter cannot distinguish or over ride the import of the Government order. Therefore whatever the clarification made in the Government letter dated 08.10.2007 can not be put against the petitioner as the law is settled in this regard. The very compassionate appointment itself is an exception, as no other appointment can be made de-hors the Service Rules and the guidelines prescribed under the relevant service rules. The compassionate appointment is permitted only to tide over the situation of the indigent family circumstances because of the sudden death of the Government employee. In this case on hand, the indigent situation of the petitioner continue even today as the petitioner has no other support in his family to lead the life along with his younger brother, hence, he seek compassionate appointment.

18. In so far as the impugned order is concerned the one

and only reason cited by the respondent corporation is that 3 year period with in which the application ought to have been made. There are justifiable reasons for the petitioner for not having applied within 3 years from the date of death of his father and mother. In view of these reasons, this Court is of the firm view that the impugned order passed after 10 years of the application of the petitioner for making compassionate appointment cannot be sustained and therefore is liable to the quashed. Accordingly it is quashed.

19. Resultantly, the respondents, viz., the 1st and 2nd respondents are directed to consider the request of the petitioner for making compassionate appointment by taking into account the recommendation made by the Thasildar concerned and the clarification sought for by the Commissioner of Corporation to the Government, which disclosed the conviction of the respondents Corporation to accommodate the petitioner in any suitable post under compassionate ground and pass orders appointing the petitioner in any of the suitable post at the respondents Corporation on compassionate ground. Needful shall be done by the respondents corporation, within a period of eight weeks from the date of receipt of a copy of this order.

20. The Writ Petition is allowed with the term indicated above. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.

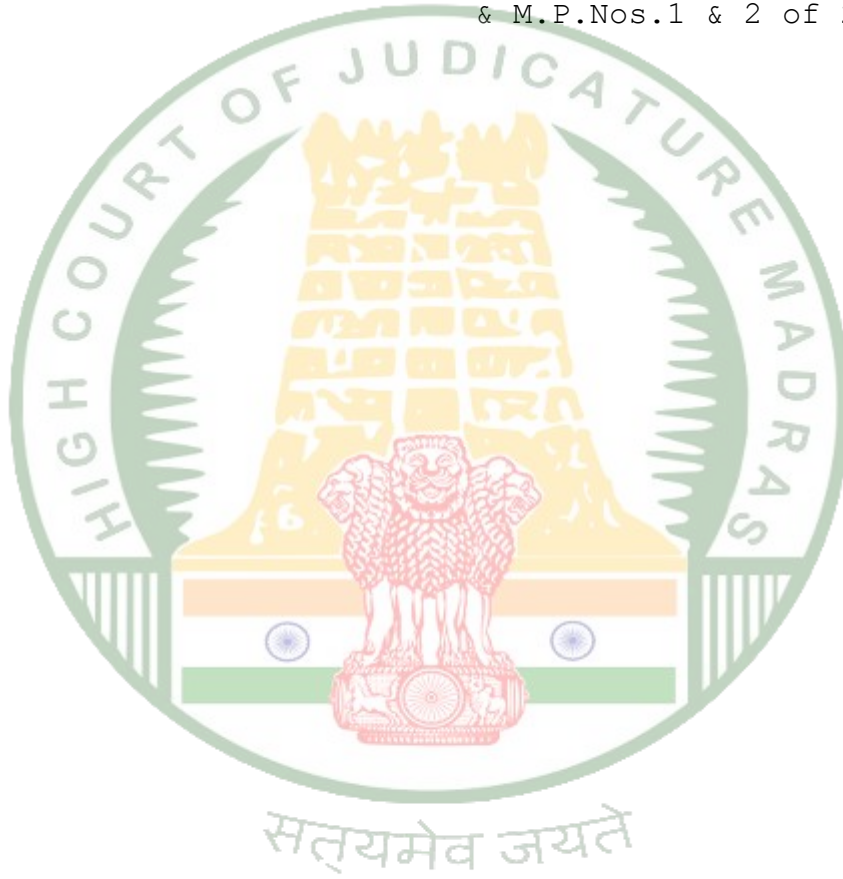
2. Secretary to the Government,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 600 009.

3. Zonal Officer, Zone III,
Corporation of Chennai, Pulianthope,
Chennai - 600 012.

+1cc to Mr.N. Benlal John Selvaraj, Advocate, S.R.No.64805

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md(18/01/2017)

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