



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P(MD) No.17307 of 2016

R.Madhan Kumar

... Petitioner

-vs-

1. The Additional Director,
Land Survey and Records Department,
Chennai-5.

2. The Assistant Director,
Land Survey and Records Department,
District Survey Office, Karur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned orders of the 2nd respondent in Na.Ka.No.A1/2365/2012 dated 27.12.2014 and Na.Ka.No.A3/602/2016(1) dated 11.05.2016 and quash the same and consequently direct the respondents to provide employment to the petitioner on compassionate ground.

For Petitioner : Mr.H.Arumugam

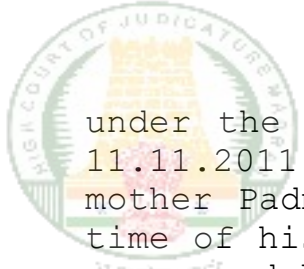
For Respondents : Mr.S.Kumar,
Addl. Govt. Pleader

O R D E R

This petition has been filed, seeking to quash the order of the 2nd respondent dated 27.12.2014 passed in Na.Ka.No.A1/2365/2012, by which it was informed to the petitioner that it is not possible for the respondents to forward the application for appointment on compassionate ground, as he did not complete the age of 18 years on the said date; the petitioner also seeks to quash the consequential order passed by the 2nd respondent in Na.Ka.No.A3/602/2016(1) dated 11.05.2016, rejecting the request of the petitioner reiterating the same ground. In addition, the petitioner sought direction to the respondents to provide employment to the petitioner on compassionate ground

2. Heard the learned counsel on either side.

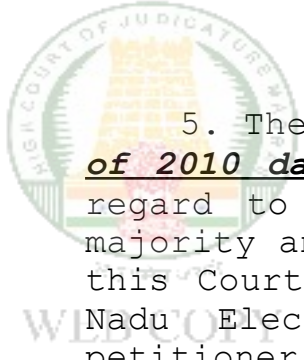
3. The case of the petitioner is that his father was employed as Deputy Taluk Inspector at Aravakuruchi Taluk, Karur District



under the control of the 2nd respondent and he died in harness on 11.11.2011 while in service, leaving behind the petitioner, his mother Padma and sister Keerthana as his legal heirs; that at the time of his father's death, the petitioner was minor aged about 15 years and his sister aged about 13 years; that the petitioner made an application on 02.07.2012 to the respondents for employment on compassionate grounds and his mother and sister also gave no objection for the same; that the Tahsildar, Thottiyam has also given a certificate to the effect that no one in the family is employed under the Government or private department and the family is in indigent circumstances and the wife of the deceased did not remarry anybody; that the petitioner completed his SSLC in April, 2012 and completed HSC in March, 2014 and in response to the application made on 02.07.2012, the 2nd respondent asked the petitioner to produce all the original certificates for considering his request; that the 2nd respondent rejected his request by proceedings dated 27.12.2014 stated supra; that in continuation of his earlier application dated 02.07.2012, the petitioner, after attaining majority, sent another representation dated 05.10.2015 to the 2nd respondent; that since no order was passed thereon, he was constrained to file a writ petition in W.P. (MD) No.1878 of 2016, in which this Court directed the 2nd respondent to consider the representation of the petitioner dated 12.11.2015 in the light of the judgment in A.Nepolian and others vs. Chief Engineer (Personal), Tamil Nadu Electricity Board, Chennai and others, reported in 2007(7) MLJ 117 and to pass appropriate orders thereon; that subsequently, on 11.05.2016 based on the orders of this Court, the 2nd respondent passed an order, rejecting his request holding that the said judgment is not applicable to the Survey Department and that he did not attain majority within three years from the date of death of his father and aggrieved by the same, the petitioner is before this Court, seeking the relief stated supra.

4. Learned counsel for the petitioner has submitted that it is now settled that statutory period of limitation, viz., three years, in respect of minors has to be calculated from the date of their attaining majority and in support of his submission, he also relied upon a judgment in **T.Meer Ismail Ali vs. The Tamil Nadu Electricity Board, Chennai** reported in **2004 (3) CTC 120**, wherein it has been held that compassionate ground application can be made within three years after attaining 18 years.

4.1. Learned counsel for the petitioner would submit that the contention of the respondents that the judgment in A.Nepolian's cases (referred to above) is not applicable to the Survey department, cannot be acceptable, because once a ratio operates as ratio decidendi, the same is applicable to all the departments and on that score, the impugned order is liable to be set aside.



5. The Hon'ble Supreme Court in the judgment in **SLP (C) No. 8305 of 2010 dated 06.07.2010** held that the period of limitation with regard to the minor has to be calculated only after attaining majority and confirmed the orders of the Hon'ble Division Bench of this Court passed in W.A.No.42 of 2007, which directed the Tamil Nadu Electricity Board therein to give appointment to the petitioner therein on compassionate ground.

5.1. The Hon'ble Division Bench of this Court in the case of **A.Kamatchi vs. The Chairman, Tamil Nadu Electricity Board, Chennai and others**, reported in **2013 (2) CWC 758**, has held that the application made by the legal heirs within three years after attaining majority has to be construed as continuation of the earlier one and cannot be treated as time barred.

6. So far as this case is concerned, there is no dispute that the petitioner already made an application on 02.07.2012 for employment on compassionate ground and his request was declined on 27.12.2014 stating that the petitioner did not attain majority on the date of representation.

7. The respondents, even after receipt of the certificate from the Tahsildar, Thottiyam to the effect that the family is in indigent circumstances due to the death of the earning member, have not acceded to the request of the petitioner. In this regard, it is worthwhile to refer to the judgment of the Hon'ble Supreme Court in the case of Balbir Kaur & Anr vs Steel Authority of India Ltd. & Ors on [2000 (6) SCC 493], wherein it has been held as under:

"13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family - this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."

8. Considering the totality of the circumstances and the orders of the Hon'ble Supreme Court as well as this Court, this Court is of the view that the impugned orders passed by the 2nd respondent are liable to be set aside.



9. Accordingly, this Writ Petition is allowed and the impugned orders of the 2nd respondent passed in Na.Ka.No.A1/2365/2012 dated 27.12.2014 and Na.Ka.No.A3/602/2016(1) dated 11.05.2016 are hereby set aside. The respondents are directed to provide employment to the petitioner on compassionate ground within a period of four weeks from the date of receipt of a copy of this order, subject to the eligibility of the petitioner to the category of post, for which, he is entitle to. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

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To:

1. The Additional Director,
Land Survey and Records Department,
Chennai-5.
2. The Assistant Director,
Land Survey and Records Department,
District Survey Office, Karur.

+1cc to Mr.H.Arumugam Advocate Sr.No. 55888

+1cc to Additional Government Pleader Sr.No. 56103

JAM/16.12.16/KM/4p-5c

W.P(MD) No.17307 of 2016
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