WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.20326 of 2016
and
W.M.P(MD)No.14525 of 2016

S.Rathnabala : Petitioner

Vs.

1. The Director,
   Tamil Nadu Fire and Rescue Service Department,
   No.17, Rukmani Lakshmipathi Salai,
   Elumbur, Chennai - 600 008.

2. The Regional Officer,
   Fire and Rescue Service Department,
   Thoothukudi District, Thoothukudi. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Impugned Order in Na.Ka.No.21989/AA1/2013, dated 01.08.2016 on the file of first respondent and quash the same and further directing the respondents to provide employment to the petitioner on compassionate ground.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.A.Muthukaruppan,
Additional Government Pleader.

O R D E R

This writ petition has been filed for issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Impugned Order in Na.Ka.No.21989/AA1/2013, dated 01.08.2016 on the file of first respondent and quash the same and further directing the respondents to provide employment to the petitioner on compassionate ground.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the respondents. By consent, the writ petition itself is taken up

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

for final disposal.

3.The case of the petitioner is that the petitioner's father Mr.Selvapandian, who was a driver, working in the Fire and Rescue Department for about 20 years, died on 26.08.2009, while in service, leaving behind his wife and the petitioner, as his legal representatives. As on the date of death his father, the petitioner was a minor and she could not apply for the job on the ground of compassionate appointment. On 13.10.2010, she applied to the second respondent for appointment on compassionate ground. However, the second respondent asked her to apply after attaining majority along with Legal Heirship Certificate and other documents. She attained majority on 06.06.2012 and she made an application for appointment on compassionate ground, along with necessary documents, on 31.10.2012 to the second respondent, who in turn, forwarded the proposal for providing employment on compassionate ground of the petitioner, to the first respondent. Since the same was not considered, she made representations to the first respondent on 04.03.2015 and 26.03.2015. Thereafter, the first respondent passed impugned order dated 01.08.2016, rejecting her claim on the ground that the application was made after 3 years and 2 months from the date of death of her father. Therefore, this writ petition has been filed.

4.The learned counsel for the petitioner would submit that even though the deceased Selvapandian died in harness on 26.08.2009, the petitioner filed the application for compassionate appointment after attaining majority and as it was found to be in order, the proposal was forwarded by the second respondent to the first respondent and the first respondent without considering the same, has erroneously passed the impugned order of rejection and therefore the same is liable to be set aside.

5.The learned counsel for the petitioner relied upon the Judgment of this Court in W.A(MD)No.1400 of 2011, dated 16.12.2015, where-under, in paragraph No.3, it has been held as follows:

> "3.It is admitted fact that the employee died on 19.03.1992, leaving behind four children and at that time, the appellant is the eldest son, aged about 12 years. If he applied for appointment on compassionate ground at that time, when he was 12 years, his application would have been rejected on the ground that he was a minor and, therefore, on attaining majority, the appellant rightly applied for appointment on compassionate ground. However, taking into consideration the plight of the family and also the young age of the mother and other children, it is a case where appointment on compassionate ground has to be given. Three years limitation cannot be applied in strait-jacket formula and each and every case has to be

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

approached differently, based on the facts. Since the eldest son of the family has rightly applied for appointment on compassionate ground, on attaining majority, the respondents have to consider the appellant's application for appointment on compassionate ground".

6.The learned Additional Government Pleader would submit that it is agreeable for the first respondent to consider the proposal submitted by the second respondent and to pass appropriate orders within a period of four weeks.

7.Recording the submission made by the learned Additional Government Pleader for the respondents and in view of the dictum laid down by this Court in the W.A(MD)No.1400 of 2011, dated 16.12.2015, the impugned order passed by the first respondent dated 01.08.2016 is set aside and the matter is remitted back to the first respondent and the first respondent is directed to consider the proposal dated 07.01.2013 submitted by the second respondent and to pass orders on merits and in accordance with law, within a period of four weeks, from the date of receipt of a copy of this order, in the light of Judgment passed in W.A.No.1400 of 2011. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Director,
   Tamil Nadu Fire and Rescue Service Department,
   No.17, Rukmani Lakshmipathi Salai,
   Elumbur, Chennai - 600 008.

2. The Regional Officer,
   Fire and Rescue Service Department,
   Thoothukudi District, Thoothukudi.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 63290
+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 63699

SMN
TE/GSV-PM : 18/11/2016 : 3P/5C

ORDER MADE IN
W.P(MD)No.20326 of 2016
and W.M.P(MD)No.14525 of 2016
24.10.2016

https://hcservices.ecourts.gov.in/hcservices/