



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.11.2016

C O R A M

WEB COPY

THE HONOURABLE DR.JUSTICE **S.VIMALA**

Writ Petition (MD) No.21462 of 2016

Lakshmi Narayanan

.. Petitioner

Vs.

1.The Director.

Tamil Nadu Fire and
Rescue Service Department,
No.1, Creams Road,
Chennai - 16.

2.The District Officer,

Tamil Nadu Fire and Rescue Department,
Ramanathapuram,
Ramanathapuram.

3.The Divisional Officer,

Tamil Nadu Fire and Rescue Department,
Ramanathapuram,
Ramanathapuram.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pursuant to the 2nd respondent impugned order passed by his proceedings in Na.ka.No.6720/Aa1/2008 dated 04.05.2016 and quash the same and consequently direct the respondents to provide an appointment to the petitioner under the compassionate ground in their department.

For Petitioner

... Mr.J.John

For Respondents

... Mr.V.R.Shanmuganathan

Special Government Pleader

O R D E R

This is a writ of Certiorarified Mandamus challenging the order dated 04.05.2016 passed by the second respondent and consequently direct the respondents to provide appointment to the petitioner on compassionate ground.

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

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.



3.The petitioner's date of birth is 22.04.1993. The petitioner's father died on 15.06.2008, which is evident from the copy of the death certificate produced. At the time, when the petitioner's father died, the petitioner herein was aged about 16 years and was living with mother Visalakshi and brother Vignesh and at subsequent point of time, the mother died on 18.01.2011. The petitioner's brother Vignesh died on 02.11.2012.

4.The petitioner was born on 22.04.1993. During 2015, he was aged about 22 years. He has completed his Diploma in Civil Engineering and later, he completed B.E., Civil Engineering also. At the time of his father's death, the petitioner was studying Polytechnic and the family was receiving family pension. When the application was submitted for compassionate appointment, it was recommended by the District Collector, Ramanathapuram. Only subsequently, through the impugned order dated 04.05.2016, the application has been rejected on the ground that the application for compassionate appointment is belated and barred by limitation. This order is under challenge in this writ petition.

5.The learned counsel for the petitioner would submit that the petitioner's brother committed suicide; the mother was murdered and therefore, he was not in a position to make any claim for compassionate appointment; only under compelling circumstances, this claim has been made.

6.The learned Special Government Pleader for the respondents would submit that as the claim itself is barred by limitation, the order passed rejecting the claim for appointment on compassionate ground is perfectly justified and therefore, there is no scope for this Court to interfere in the order passed by the second respondent.

7.The learned counsel for the petitioner would submit that if penurious circumstance is the only sole criteria, in granting compassionate appointment, the Rule providing for limitation should be considered as directory and not mandatory and viewed in that angle, the claim made ought not to have been rejected.

In case of Khadeja Bibi & Ors. Vs. State of West Bengal & Ors. reported in (2000 (2) CLJ 108) the High Court of Calcutta had an occasion to deal whether the Rule framed for appointment on compassionate ground is mandatory or directory. In the said decision, it has been further held as follows:-

"It has been specifically held in the said case that the rules are directory. There cannot be strait jacket formula to be followed. Every application made beyond the prescribed period, the same should be considered as the provision is directory but it depends upon the facts of the each case....."



8. Though the petitioner has filed his application belatedly, the fact remains that since the petitioner was a minor at that point of time, he was not in a position to make any claim for compassionate appointment. The circumstances faced by the petitioner were beyond the control of the petitioner and that had driven him to the extent of asking him appointment on compassionate ground.

8.1. The petitioner had neither financial support nor moral support, on account of death of all the members in the family. Therefore, the case of the petitioner should be considered as an exceptional one. The limitation so far as the minors are concerned, it is three years, after the minor attaining majority. In this case, there is a delay of roughly two years in making the application.

9. The procedure that the application should be filed within three years has to be followed normally, but there can be exemption to the Rule in certain special circumstances. Considering the special circumstances, in which, the petitioner is placed, the respondents are directed to consider the case of the petitioner sympathetically and also positively and to provide appointment on compassionate ground to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that this order has been passed considering the special circumstances available to the petitioner and this shall not be cited as a precedent.

10. The writ petition is disposed of accordingly. No costs.

Sd/-
ASSISTANT REGISTRAR (co)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The Director, Tamil Nadu Fire and Rescue Service Department, No.1, Greaves Road, Chennai - 16.
2. The District Officer, Tamil Nadu Fire and Rescue Department, Ramanathapuram, Ramanathapuram.
3. The Divisional Officer, Tamil Nadu Fire and Rescue Department, Ramanathapuram, Ramanathapuram.

+1 CC TO MR. J. JOHN, ADVOCATE, SR NO. 74013
+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO. 74797
MAS/MR:10.02.2017:3P/6C

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