



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2016

CORAM:

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

W.P (MD) No.22983 of 2016

S.P.Thiyagarajan : Petitioner

Vs.

1.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

2.The Dean,
Government Medical College and Hospital,
Asaripallam, Kanyakumari District. : 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 of the second respondent i.e., the Dean, Government Medical College and Hospital, Asaripallam relating to his impugned letter Na.Ka.No.3787/Ni4/2016, dated 20.10.2016 and quash the same and consequently direct the respondents to appoint Thiru.T.Karthick, petitioner's son, on completion of 18 years of age in the post to which he is eligible in accordance with law without insisting the age of the minor at the time of death of his mother.

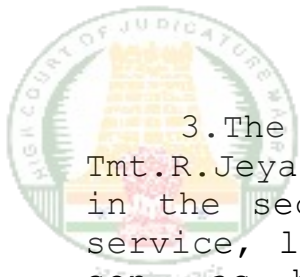
For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.A.Muthukaruppan,
Additional Government Pleader.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, praying to quash impugned letter of the second respondent dated 20.10.2016 and consequently to direct the respondents to grant appointment to Thiru.T.Karthick, petitioner's son, on compassionate grounds.

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 for final disposal.



3. The case of the petitioner is that the petitioner's wife Tmt.R.Jeyakumari, who was serving as a Selection Grade Staff Nurse in the second respondent hospital, died on 10.11.2014, while in service, leaving behind her husband, the petitioner herein and her son, as her legal representatives. The petitioner filed an application on 11.05.2016 seeking appointment on compassionate grounds for his son Karthick. The application came to be rejected by the order dated 20.10.2016. The said order is under challenge in this writ petition.

4. The date of birth of the son of the petitioner, namely, Karthick, is 05.05.2000. He will be eligible for appointment on compassionate grounds only after attaining 18 years of age. On the date of the application of the appointment, as the petitioner's son happened to be a minor, the claim has been rejected.

5. What is to be done is the next issue.

5.1. The disqualification on account of minority cannot be the ground to decline employment on compassionate appointment forever. Once the disqualification ceases, i.e., when the minor attains majority, his claim for compassionate appointment has to be considered. At this juncture, it would be relevant to quote the decision of this Court interpreting limitation as including period of three years from the date of attaining majority and the decision reads as under:-

(i) W.A(MD)No.1400 of 2011, dated 16.12.2015:-

"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 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".

5.2. The High Court of Allahabad reported in MANU/UP/1906/2016 considered the issue as to whether the application not made within



the stipulated period of four years seeking compassionate appointment can be considered. Relying upon the Judgment of this Court, which was upheld by the Supreme Court, the Court directed the appointing authority to consider the claim for compassionate appointment though the application was out of time only on account of minority. The relevant paragraphs highlighting the judgment of this Court are extracted for reference as under:

"11. The issue as to whether an application made after 4 years can be considered or not, has come up for consideration in number of cases before High Court and the Honourable Supreme Court where the findings have been given by the Courts that in case the appellant has not filed application seeking compassionate appointment within four years from the date of death of his father and that he has not completed 18 years of age within four years, these are not valid grounds to deny appointment on compassionate ground. Similar issue was considered by Madras High Court in the decision reported in T. Meer Ismail Ali v. The Tamil Nadu Electricity Board, MANU/TN/0337/2004 : 2004 (3) CTC 120 [F.M. Ibrahim Kalifullah, J. (as he then was)]. In the said case the deceased Board employee died on 13.04.1993 and the application submitted by one of his daughter on 05.08.1997 was rejected on the ground that she had not completed 18 years of age and after completing 18 years of age when an application was made on 04.07.2000 which was rejected on the ground that the application was not made within three years from the date when the Board Proceedings dated 13.10.1995 was issued. The Court considering the technical plea raised by the respondent Board set aside the said order and remitted the matter to pass fresh orders without reference to the objections already raised by the Board. The said order of the learned single Judge was challenged by the TNEB in W.A. No. 4008 of 2004 before the First Bench of Madras Court (consisting of the Hon'ble Mr. Justice Markandey Katju, C.J. (as he then was) and N.V. Balasubramanian, J.) which dismissed the writ appeal on 01.12.2004. The respondents therein filed SLP No. 6387 of 2005 against the said order which was also dismissed on 01.04.2005 by the Honourable Supreme Court and consequently the said writ appellant was given compassionate appointment.

12. Another Writ Petition in W.P. No. 41459 of 2005 was considered by Madras High Court on the same set of facts. The said writ petition was allowed following the earlier order of the Division Bench of Madras High Court made in W.A. No. 4008 of 2004 dated 01.12.2004 and the said decision is reported in Selvi R. Anbarasi v. Chief Engineer (Personnel), TNEB, Chennai, MANU/TN/8585/2006 : 2006 (2) MLJ 200. The said order was challenged by the TNEB before the First Bench in W.A. No. 988 of 2006.



However, the said appellant was given appointment on compassionate ground by implementing the order and therefore the writ appeal was dismissed as infructuous on 15.09.2006 by recording the statement made by the Standing Counsel for the TNEB.

13. In W.P. No. 21512 of 2003 one Indiraniammal challenged the rejection of compassionate appointment before Madras High Court on similar ground. The learned single Judge dismissed the writ petition by order dated 04.08.2003 against which W.A. No. 3050 of 2003 was filed and the said writ appeal was allowed by the Division Bench (consisting of the Hon'ble Mr. Justice P. Sathasivam (as he then was) & S.K. Krishnan, J.) by order dated 08.03.2005 following the earlier judgments as well as the Supreme Court Judgment reported in Balbir Kaur v. Steel Authority of India Ltd., MANU/SC/0400/2000 : (2000) 6 SCC 493. Against the said decision Civil Appeal No. 2039 of 2006 was filed by the respondent Board which was dismissed by the Honourable Supreme Court on 30.03.2010.

14. Dismissal of another W.P. No. 775 of 2004 by order dated 29.01.2005 of Madras High Court on the ground of delay was considered by the Division Bench (F.M. Ibrahim Kalifullah, J. (as he then was) & P. Murugesan, J.) in W.A.(MD). No. 29 of 2006 and by order dated 27.06.2006 the Division Bench allowed the writ appeal and directed to give compassionate appointment to the younger son of the deceased Board employee, who died on 15.11.1996. The said order of the Division Bench was also challenged by the Board in SLP(C) No. 15534 of 2007 which was also dismissed by the Apex Court on 08.04.2009.

15. In W.P. No. 18575 of 2006 filed by P. Venkatesan, Madras High Court again considered similar issue and allowed the writ petition on 20.06.2006 by following earlier orders. The said order was also challenged by the respondent in W.A. No. 42 of 2007 and the Division Bench (D. Murugesan, J. & K. Venkataraman, J.) dismissed the writ appeal on 02.07.2009. The Board filed SLP(C) No. 8305 of 2010 which was also dismissed by the Hon'ble Supreme Court on 06.07.2010. The said candidate viz., P.Venkatesan was given compassionate appointment by order dated 18.08.2010.

16. Similar issue came up for adjudication before High Court of Madras in J. Jeba Mary vs. The Chairman, Tamil Nadu Electricity Board reported in MANU/TN/0674/2011 :2011 (3) LLN 405 (Mad.) which was considered by Mr. Justice N. Paul Vasanthakumar. The writ was allowed and the direction was given to give compassionate appointment to the dependent of the deceased employee. The judgment was confirmed by the Apex Court.



17. From the above referred decisions passed in series of cases on the same ground, it is evident that on the similar grounds raised by the respondents that the appellant has not filed application seeking compassionate appointment within stipulated period from the date of death of his father and that he has not completed 18 years of age within stipulated period are not valid grounds to deny appointment on compassionate ground as according to appellant no one in his family was employed and the family of the appellant was in indigent circumstance even on that date. Therefore, when the family of the employee who died in harness is still suffering where no other member is employed, this Court as well as the Apex Court have always come to rescue of the applicant seeking appointment on compassionate grounds. ***Such applications can also be entertained in deserving cases and the said rule of 4 years can only be treated as a rule of thumb and cannot be strictly implemented in all cases.***

From the decisions, cited supra, the course open to the petitioner is that, the petitioner's son, Karthick, after attaining majority, can move the application for appointment on compassionate grounds. If and when such application is filed, the respondents shall consider the same, in the light of the legal position, cited supra.

5.3. In the result, the impugned order is set-aside and the writ petition is disposed of, with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

smn

To

1.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

2.The Dean,
Government Medical College and Hospital,
Asaripallam, Kanyakumari District.

+1cc to Spl.Government Pleader Sr.No.79869

+1cc to Mr.S.Visvalingam, Advocate Sr.No. 78320

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