



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2016

CORAM

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P (MD) No.23719 of 2016

M.Vivek

... Petitioner

vs.

1)The Executive Engineer,
Public Works Department / Water Resource Organisation
Department,
Periyar Main Channel,
Sub Division-I, Melur,
Madurai District.

2)The Assistant Executive Engineer,
Public Works Department / Water Resource Organisation
Department, Periyar Main Channel,
Sub Division-I,
Madurai - 625 002.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent i.e., the Assistant Executive Engineer, Public Works Department, Water Resource Organization Department, Periyar Main Channel, Sub Division-I, Madurai, relating to his letter No.**கா.6/2016/உதவியாளர்/நாள்**; 19.08.2016 and quash the same and consequently direct the respondents to appoint the petitioner on compassionate ground according to his qualification as per the instructions of the Government within a specified time frame that may be fixed by this Hon'ble Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader

ORDER

The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to his Letter No.**கா.6/2016/உதவியாளர்/நாள்**; 19.08.2016 and quash the same and consequently, direct the respondents to appoint the petitioner on compassionate grounds, according to his qualification.



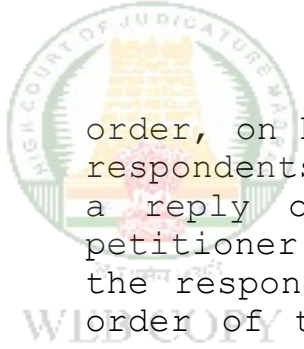
2.The petitioner's father while he was in service, died on 16.04.2002, leaving behind the petitioner and his sister and his mother as legal heirs. At the time of death of the petitioner's father, the petitioner was 10 years old and his younger sister was 8 years old. Though it was claimed by the petitioner that his mother on 11.07.2002 had submitted an application to the respondents, for considering compassionate appointment of her son, that is, the petitioner, the same could not have been considered by the respondents for the obvious reasons that the petitioner was admittedly only 10 years old at that time.

3.Thereafter, the petitioner, on attaining majority, had sent a request to the respondents for compassionate appointment on 23.02.2010. The said application was returned by the 2nd respondent on 02.03.2010, stating that the application should be routed through the office, where originally the petitioner's father was working and once the same is made through proper channel, further action would be taken. This endorsement was made by the 2nd respondent in the said application on 02.03.2010 itself.

4.Thereafter, as directed by the 2nd respondent, the petitioner had sent an application for compassionate appointment through proper channel on 06.04.2010. On receipt of the same, the 2nd respondent vide his proceedings in Letter No.6/2010, dated 07.04.2010, had forwarded the same to the 1st respondent, for necessary action of appointment on compassionate grounds. Along with the said proceedings, the 2nd respondent had also sent all other documents including service register of the petitioner's father, for necessary action.

5.Thereafter, nothing had come from the respondents and the said application submitted by the petitioner on 06.04.2010 and forwarded by the 2nd respondent to the 1st respondent on 07.04.2010 with relevant records including the service register of the petitioner's father, seems to have not been disposed and therefore, it shall be presumed that the same has been kept pending.

6.As nothing was forthcoming from the respondents, the petitioner had sent further reminders to the respondents and lastly on 25.06.2016. Only the said letter cum reminder in the name of application dated 25.06.2016 had been considered by the respondents and by the impugned order dated 19.08.2016, the same was rejected, stating that the application for compassionate appointment should have been made within three years time from the date of death of the Government servant and since the application was submitted by the petitioner only on 09.02.2010 and the same had already been returned on 12.05.2010, the present application sent by the petitioner cannot be considered or accepted and accordingly, the same was rejected. Even after the impugned



order, on behalf of the petitioner, legal notice was issued to the respondents on 25.09.2016, for which, the 2nd respondent had given a reply on 29.09.2016, stating that the request made by the petitioner through the legal notice was under consideration with the respondents. Only at this juncture, challenging the impugned order of the 2nd respondent dated 19.08.2016, the petitioner has come out with the present writ petition with the abovesaid prayer.

7. Heard both sides.

8. The learned counsel for the petitioner would contend that admittedly when the petitioner's father died, the petitioner was only 10 years old and his younger sister was 8 years old. The petitioner's mother was house wife and had no educational qualification. In spite of the said factor, on 11.07.2002, the petitioner's mother had given an application requesting the respondents to give compassionate appointment to the petitioner and the said application though could not have been taken up for consideration at that time, as the petitioner was only 10 years old at that time, at least, on his attaining majority, the said application could have been taken up. Even before attaining majority, the petitioner had sent another application for compassionate appointment on 23.02.2010 and the said application was returned as referred to above for want of submission of the same through proper channel. Thereafter, an application was sent through proper channel on 06.04.2010 and the same was forwarded by the 2nd respondent to the 1st respondent on 07.04.2010. Since no action was taken, again, an application was given by the petitioner on 25.06.2016 and the said application has now been rejected by the impugned order with aforesaid reasons and therefore, the same is not sustainable.

9. Per contra, the learned Special Government Pleader appearing for the respondents would contend that no doubt, the petitioner's father died during service and for immediate alleviation of the family situation, the Government scheme of compassionate appointment is available and immediately, if application had been filed by any one of the legal heirs of the deceased Government servant, the same could have been considered by the respondents. But, admittedly, no application was submitted in time and therefore, the delayed application was rightly rejected by the respondents. In this regard, the learned Special Government Pleader also would contend that in the number of cases of compassionate appointment, where applications had been submitted belatedly, that is, beyond the three years period, Courts have taken a view that such applications need not be considered and any rejection made in this regard by the authorities concerned, has been accepted and upheld in a number of decisions. In view of the said legal position, the present order which is impugned herein, need not be interfered with and the same can be upheld.



10. This Court have considered the rival submissions made by the learned respective counsels.

11. The facts are admitted with regard to the death of the petitioner's father and subsequent application made by the petitioner. The only reason cited in the impugned order by the 2nd respondent is that the application should have been filed within three years period. As referred to above, at the earliest point of time, the petitioner's mother had submitted an application on 11.07.2002, at that time, the petitioner was only 10 years old. Subsequently, even before attaining majority, when the petitioner has completed +2, he had submitted an application on 23.02.2010 and the same was returned by the 2nd respondent on 02.03.2010, directing the petitioner to submit the application through the office where his father was working. Only in response to the said return memo and instructions given by the 2nd respondent, the petitioner had submitted further application on 06.04.2010 and the same was duly forwarded by the 2nd respondent to the 1st respondent vide his letter dated 07.04.2010 with all relevant documents and service particulars of the petitioner's father. The fate of the said application that whether the said application has been considered or not by the respondents, is not known. There is no contra proof to show that even the said application dated 06.04.2010 forwarded by the 2nd respondent on 07.04.2010 was considered and disposed of. Therefore, in all probability, it can be presumed that the said application is also with the respondents for consideration. Nevertheless, the petitioner had submitted one more application on 25.06.2016, as for long time, no positive action was forthcoming from the respondents and only the said application has now been disposed of by the order of rejection which is made by the 2nd respondent in the order impugned herein.

12. Therefore, the reasons adduced by the 2nd respondent in the order impugned are in no way connected with the original application submitted by the petitioner on 06.04.2010 and duly forwarded by the 2nd respondent on 07.04.2010. Therefore, this Court finds that the reasons adduced in the impugned order cannot be sustained and in that view of the matter, the impugned order is liable to be quashed and accordingly quashed.

13. Since the petitioner and his family members had been making sincere attempts from day one, that is, the death of father of the petitioner for getting compassionate appointment and all these applications made seriously by the petitioner's mother originally and subsequently by the petitioner, at least, twice go to show that the family circumstances is very pathetic and for this kind of situation, the scheme of compassionate appointment is being made by the Government. When that being so, the cryptic order passed by the 2nd respondent quoting the order of the 1st respondent



in the order impugned herein, is not in consonance with the spirit of the scheme of compassionate appointment and therefore, this Court has no hesitation to give a direction to the respondents to take up the application submitted by the petitioner dated 06.04.2010 and forwarded by the 2nd respondent on 07.04.2010 and pass suitable orders, considering the family circumstances of the petitioner for giving appointment to the petitioner on compassionate grounds, and considering the educational qualification of the petitioner. The needful shall be done within a period of eight weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed in part to the terms indicated above. No costs.

Sd/-
Deputy Registrar (Admin)

/True Copy/

Sub Assistant Registrar

To

1) The Executive Engineer,
Public Works Department / Water Resource Organisation
Department,
Periyar Main Channel,
Sub Division-I, Melur,
Madurai District.

2) The Assistant Executive Engineer,
Public Works Department / Water Resource Organisation
Department, Periyar Main Channel,
Sub Division-I,
Madurai - 625 002.

+1 cc to MR.S.VISVALINGAM, Advocate Sr.No.7928

+1 cc to Special Government Pleader SR.No.80009

W.P (MD) No.23719 of 2016
07.12.2016

SMA/PM/29.12.2016:5P/5C