



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition (MD) No.1153 of 2013

G. JEGATHIS

... Petitioner

Vs.

1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY TO GOVERNMENT
RURAL DEVELOPMENT DEPARTMENT
SECRETARIAT, CHENNAI - 09.

2 THE DISTRICT COLLECTOR
COLLECTORATE, KANYAKUMARI DISTRICT
NAGERCOIL.

3 THE COMMISSIONER
KURUNTHENCODE PANCHAYAT UNION,
KURUNTHENCODE POST,
KANYAKUMARI DISTRICT.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 2nd Respondent in Moo.Mu. 39344/2008 dated 08.07.2008 and quash the same and consequently direct the respondents to provide employment to the Petitioner on compassionate grounds, based on the Educational Qualification within a stipulated time that may be fixed by this Court.

For Petitioner	: Mr.M.Saravana Kumar
For Respondents	: Mr.J.Gunaseelan Muthaiah Govt. Advocate

ORDER

The prayer in the writ petition is for a certiorarified mandamus to call for the records pertaining to the impugned order passed by the 2nd Respondent in Moo.Mu. 39344/2008 dated 08.07.2008 and quash the same and consequently direct the respondents to provide employment to the Petitioner on compassionate grounds.



2.The petitioner's father one late Mr.A.Ganesan was appointed as Night Watchman in the Rural Development Department on 11.09.1964 and thereafter, he was promoted as an Office Assistant in the year 1982 at the third respondent's Office and suddenly, he died on 12.02.1988 leaving behind him the petitioner and his mother. At the time of death of his father, the petitioner was 1½ years old. Therefore, the petitioner's mother had filed an application on 19.02.1988 to the respondents seeking for compassionate appointment.

3.The said application was forwarded by the second respondent to the Office of the third respondent for necessary action by proceedings of the second respondent dated 04.06.1990. Thereafter, nothing was forthcoming, in spite of the repeated requests having been made by the petitioner's mother. After several years, since the petitioner had attained majority, in the year 2006, he had made application seeking compassionate appointment, as the petitioner had the educational qualification of S.S.L.C. The said application submitted by the petitioner was considered by the third respondent Office and by a letter dated 28.01.2006, the third respondent has stated that the Government has not passed any order for compassionate appointment. Thereafter, again, a request was made by the petitioner to the second respondent on 10.07.2006. On the said application itself, the second respondent Office has made an endorsement stating that the guidelines for making appointment is yet to be received from the Government and only after receipt of the same, the request of the petitioner would be considered. Therefore, the petitioner was directed to resubmit the application, after getting the guidelines from the Government. Thereafter, by a letter, dated 09.09.2006, the second respondent has informed the petitioner that the request of the petitioner would be considered for compassionate appointment, on receipt of guidelines from the Government. Thereafter also, the petitioner had been making representations for seeking compassionate appointment to various authorities. By a letter dated 02.03.2007, the third respondent has informed the petitioner that the request of the petitioner for getting compassionate appointment has been recommended to the second respondent/District Collector. Thereafter also, requests were made by the petitioner and his mother to the second respondent. On 03.11.2007, the second respondent, had, however, informed to the petitioner that the Government Servant Mr.A.Ganesan i.e the father of the petitioner, while he was in service, died in the year 1988 and after 18 years, the petitioner had applied for compassionate appointment. The petitioner was only 1 ½ years old at the time of death of his father. Therefore, the application of the petitioner seeking compassionate appointment cannot be considered. Thereafter, the petitioner submitted a detailed representation to the second respondent, for which, the second respondent, by an order dated 08.07.2008, has stated that when the



same request made at the time of death of his father, by the petitioner's mother, dated 19.02.1988, she was 46 years old and at that time, the petitioner was two years old. Since compassionate appointment cannot be granted beyond 40 years of age and the petitioner now, has applied after 18 years of the death of his father and once a legal heir had applied and his application was rejected for compassionate appointment, another legal heir cannot apply for compassionate appointment. This is the order impugned in this writ petition.

4.The learned counsel for the petitioner, by relying upon the various correspondences occurred earlier between the petitioner's mother and the respondents and later, the petitioner and the respondents, submitted that at the time of death of his father, admittedly, he was a two years old child. Admittedly, his mother had applied for compassionate appointment and that was pending for a long period and that especially the respondents 2 and 3 rejected the request of the petitioner's mother. Thereafter, also after attaining majority, when the petitioner made an application, originally, it was stated that after getting guidelines from the Government, it would be considered and in another time, it was stated by the third respondent that the case of the petitioner for compassionate appointment was recommended to the second respondent for necessary action. Ultimately, both the second and third respondents had rejected the application of the claim of the petitioner. At last, an order was passed by the third respondent stating that at the time of death of his father, the petitioner was two years old and his mother was 46 years old and therefore, her application cannot be considered thereafter rejecting the petitioner's application, since the petitioner has applied for compassionate appointment after 18 years of his father's death, is totally unsustainable and therefore, the petitioner is entitled to be appointed on compassionate ground and the writ petition has to be allowed.

5.The learned Government Advocate appearing for the respondents, relying upon the averments contained in the counter affidavit would contend that the Government have banned new appointments in the Government Service in the year 2001 itself and in the year 2006, the ban order has been lifted by the Government for appointment under compassionate grounds. The petitioner has not made his application in the proper way. Because he has not completed 18 years of age at the time of death of his father and the respondent also not known the original family position of the petitioner and therefore, the petitioner's prayer seeking compassionate appointment is against the Government Orders in force. Therefore, on that ground, there is every justification on the part of the respondents to pass rejection order. Hence, the same need not be interfered with.



6. This Court has considered the rival submissions made by the learned counsel appearing for the parties.

7. Time and again, this Court has repeatedly pointed out that in case of appointments other than regular way of recruitment or appointment to the Government service, only in order to alleviate the sufferings of the family of the deceased or in order to facilitate the family to tackle the sudden death of the breadwinner of the family, such kind of compassionate appointments are made. Here, in the case on hand, the petitioner's father died in February 1988 and immediately, within a week's time, the petitioner's mother made an application to the respondent for compassionate appointment. On receipt of such application, it was replied by the second respondent by a letter dated 04.06.1990 that her request for seeking appointment on compassionate ground is forwarded to the third respondent for taking appropriate action. In spite of the said communication from the second respondent, neither the third respondent nor the second respondent had come forward to consider the request of the petitioner's mother for giving compassionate appointment.

8. Admittedly, since the petitioner was a child at the time of his father's death, he could not make any application, after attaining majority, he had made an application to the respondent in the year 2006. Even in respect of the said application made by the petitioner by various proceedings issued by the 2nd and 3rd respondents, dated 28.01.2006 and 09.09.2006, it was the stern stand of the respondents that for making compassionate appointment, they are awaiting the guidelines from the Government and once the Government gives such guidelines, the request of the petitioner would be considered. Thereafter, by a letter dated 02.03.2007, the third respondent had intimated the petitioner that his request for compassionate appointment had been recommended to the second respondent for making necessary action. Even after all communications and correspondences between the petitioner's mother and the respondents, thereafter between the petitioner and the respondents, nothing had happened. Ultimately, by the impugned order, the second respondent had rejected the request of the petitioner once for all by stating two reasons.

9. According to the second respondent, at the time of making application on 19.02.1988, the petitioner's mother was 46 years old and therefore, beyond 40 years, there is no scope for making appointment. The second respondent further stated that the petitioner, since made an application after 18 years of the death of his father, the same has been rejected.

10. Both the reasons given by the second respondent are, in the opinion of this Court, totally unjustified. The petitioner's mother immediately after the death of the petitioner's father had



diligently made an application seeking compassionate appointment. For the said applications, the consistent reply of the respondents 2 and 3 was that the same would be taken up for consideration, after obtaining guidelines from the Government. Having given these reasons, now after several years, the second respondent has stated that at the time of making application, the petitioner's mother was 46 years old ie beyond 40 years, she would not be entitled for compassionate appointment. This reason is totally unsustainable for the simple reason that for making compassionate appointment, this kind of age criteria cannot be put against the persons who are in penurious situation. For this, all the relevant provisions made in the service rules such as age, minimum educational qualification etc., can be relaxed. Inso far as the date of application of the petitioner, it is simply stated that the petitioner had made an application after 18 years. Obviously, the petitioner can make application only after 18 years, because at the time of his father's death, no prudent man can expect that a two years old baby to make an application. Moreover, when the petitioner made an application, after attaining majority, the respondents informed him that guidelines would be obtained from the Government. Therefore, both the second and third respondents have been making a foul game in the life of the family of the petitioner, who are left at lurch, after the sudden death of his father. It is highly deplorable and this kind of attitude cannot be entertained. Therefore, this Court has no hesitation to hold that the impugned order is unsustainable and accordingly, it is quashed.

11.Resultantly, this writ petition is allowed with the following directions:

i)The respondents 2 and 3 shall immediately take into consideration of the application submitted by the petitioner and provide compassionate appointment to the petitioner in any of the post, based on his educational qualification.

ii)The said exercise shall be completed within a period of 4 weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

sd/-

Assistant Registrar(C.S-II)

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



To

1 THE SECRETARY TO GOVERNMENT,
STATE OF TAMILNADU,
RURAL DEVELOPMENT DEPARTMENT,
SECRETARIAT, CHENNAI - 09.

2 THE DISTRICT COLLECTOR,
COLLECTORATE,
KANYAKUMARI DISTRICT
NAGERCOIL.

3 THE COMMISSIONER,
KURUNTHENCODE PANCHAYAT UNION,
KURUNTHENCODE POST,
KANYAKUMARI DISTRICT.

+1CC TO MR.M.SARAVANAKUMAR, ADVOCATE IN SR NO.81367.

+1CC TO SPECIAL GOVERNMENT PLEADER IN SR NO.81610.

W.P(MD)No.1153 of 2013
16.12.2016

vs

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