



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2016

Coram

**THE HONOURABLE MR.JUSTICE T.RAJA**

W.P. (MD) No.760 of 2011

P.Murugan

:Petitioner

vs.

1.The Block Development Officer,  
Vadipatti Panchayat Union,  
Vadipatti, Madurai District.

2.The Commissioner,  
Vadipatti Panchayat Union,  
Vadipatti, Madurai District.

3.The District Collector of Madurai,  
Collectorate Complex  
Madurai.

: Respondents

**Prayer:** Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings Na.Ka.No.61/2008/A1, dated 28.05.2010 of the 1<sup>st</sup> respondent and quash the same and consequently direct the respondents to provide employment in the office of the 2<sup>nd</sup> respondent to the petitioner on compassionate ground.

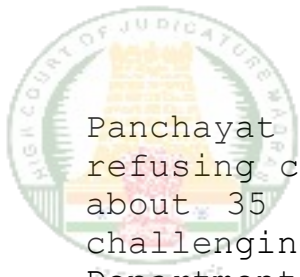
For Petitioner :Mr.V.Sitharanjandas

For Respondent-1 :Mr.D.Sasikumar  
Government Advocate

For Respondent-2 &3:Mr.G.Muthukannan  
Government Advocate

**O R D E R**

<https://hcservices.ecourts.gov.in/hcservices/>  
The petitioner aggrieved by the impugned order, dated 28.05.2010, passed by the Block Development Officer, Vadipatti



Panchayat Union, Madurai District / the first respondent herein, refusing compassionate appointment, on the ground that he was aged about 35 years 6 months and 8 days, has come to this Court challenging the same, as per G.O.Ms.No.704, Public (Services-A) Department, dated 15.04.1964.

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2. The learned counsel for the petitioner assailing the impugned order, dated 28.05.2010, would submit that the petitioner's father Late Palanichamy while serving as an office assistant in the office of Vadipatti Panchayat Union, died in harness on 15.01.2008 leaving behind his widow, namely the petitioner's mother / Shanmugavalli, Petitioner and his brother Stalin and sister Subashini. After some time, the petitioner's mother also died. Moreover, the petitioner being a physically challenged person, his younger brother and sister showing compassionate on him have given consent for seeking employment in Vadipatti Panchayat Union, on compassionate ground. As he studied only upto 8<sup>th</sup> standard and he is also doing some coolie work, he has made an application with all relevant documents namely, Legal heir certificate, death certificate, his educational certificate in the month of January 2009 along with consent letter given by his brother and sister. The second respondent also issued a letter, dated 16.06.2009 asking him to furnish certain documents. Accordingly necessary application with required documents were sent to him. But, finally, the Block Development Officer, Vadipatti Panchayat Union / the first respondent herein, has rejected his application stating that on the date of death of petitioner's father, he was over aged by six months and 8 days. Therefore, he is not entitled to, as per G.O.Ms.No.9, Labour and Employment Department, dated 19.01.1998.

3. Placing reliance on Rule 53 of Tamil Nadu State and Subordinate Service Rules, the learned counsel appearing for the petitioner contended that, as per Rule 53, age concession has been given to a physically challenged person. Therefore, a physically handicapped person shall be eligible for an age concession upto ten years over and above the age limits prescribed for the appointment to post by direct recruitment only, provided the applicant is otherwise fully suitable and handicap is not such as would render him incapable of efficiently discharging the duties of the post for which he selected.

4. Mr.G.Muthukannan, the learned Government Advocate appearing for the respondents 2 and 3 opposing the application of Rule 53 submitted that, as the said Rule is made applicable only to the direct recruitment and it cannot be made applicable to any appointment to be made on compassionate ground.

<https://hcservices.courts.gov.in/hcservices/> 5. The Court is not inclined to accept the said argument of the learned Government Advocate, the reason is, a mere reading of Rule 53 does not provide any distinction between direct

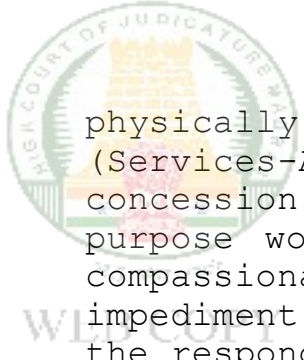


appointment made through compassionate, since a ten years age concession over and above the age is prescribed for the appointment to the post by direct recruitment only. No doubt, a reading of the said Rule shows that a physically handicapped person shall be eligible for an age concession upto ten years over and above the age limits prescribed for the appointment to post by direct recruitment only, provided the applicant is otherwise fully suitable. But that does not mean the appointment on compassionate ground stands excluded, the reasons is the successive Rule 54(A) takes care of the situation, which is given as under for ready reference:-

**"54.A.- Age concessions for appointment on compassionate grounds:-** Notwithstanding anything contained in the Special Rules for various State and Subordinate Services regarding the maximum age limit for appointment by direct recruitment, in the case of appointment on Compassionate grounds, the maximum age limit shall be \*\* 35 years in respect of the sons or the unmarried daughters and 50 years @ in respect of wife or husband of the Government servant, who died in harness while in service, or retired from service on medical invalidation before attaining the age of fifty three years, as the case may be."

6. One another G.O.Ms.No.704, Public (Services-A) Department, dated 15.04.1964 also has been pressed into service by the learned counsel for the petitioner. Paragraph 3 thereof clearly shows that the Government have examined this issue and with the concurrence of the Public Service Commission, direction has been given that the physically handicapped namely, the blind, the deaf, and orthopedically handicapped be allowed for age concession of ten years in respect of direct recruitment to posts which do not require normal physical qualifications in all respects. Therefore, when the previous G.O.Ms.No.704, Public (Services-A) Department, dated 15.04.1964 also reiterates the same position, as taken by Rule 53 giving maximum ten years of age concession over and above the age limits prescribed for appointment by direct recruitment, the stand taken by the 1<sup>st</sup> respondent in the impugned order that the petitioner is not eligible on account of over age, for compassionate appointment has to be rejected.

7. Moreover, the counter affidavit filed by the first respondent although reiterates the G.O.Ms.No.9, Labour and Employment Department, dated 19.01.1998 that the maximum age limits for compassionate appointment is 35 years. Again in the counter affidavit the respondents have not made it clear that the maximum age limits for compassionate appointment 35 years will be applicable even to the physically challenged. Therefore, when the



physically challenged person, as per G.O.Ms.No.704, Public (Services-A) Department, dated 15.04.1964, is entitled to get age concession of ten years in the direct recruitment, the same purpose would be applicable to any physically challenged to the compassionate appointment also, therefore, this Court finds no impediment to set aside the impugned order, otherwise the stand of the respondent would definitely amount to clear discrimination.

8. In the result, the Writ Petition is allowed and the impugned order, dated 28.05.2010, passed by the Block Development Officer, Vadipatti Panchayat Union, Madurai District / the first respondent herein, is set aside. The respondents are directed to consider the case of the petitioner by giving 10 years of maximum age limit and consider him whether he is fully suitable and his handicap is not such as would render him incapable of efficiently discharging the duties of the post for which he selected. The said exercise will be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/  
Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

**To**

1.The Block Development Officer,  
Vadipatti Panchayat Union,  
Vadipatti, Madurai District.

2.The Commissioner,  
Vadipatti Panchayat Union,  
Vadipatti, Madurai District.

3.The District Collector of Madurai,  
Collectorate Complex Madurai.

+1cc to M/s.V.Sitharanjandas, Advocate in SR.No.28871

SDR/KBM/01.07.2016/4P/5C

**W.P. (MD) No.760 of 2011**  
08.06.2015