



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD).No.7063 of 2013

Sundarapandiyan

... Petitioner

-Vs-

1.The State of Tamil Nadu
Rep by its Secretary,
Revenue Department,
St. George Fort,
Secretariat,
Chennai.

2.The District Collector
Madurai District
Madurai - 20

... Respondents

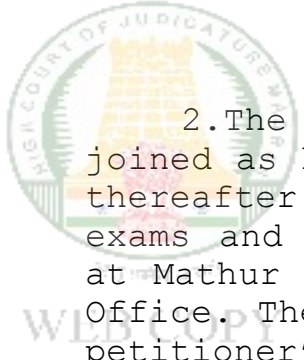
Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Kaditha. No.4168 / Pani/ 9(1) 2008-2 dated 13.05.2008 passed by the 1st Respondent and to quash the same as illegal and consequently direct the Respondents to give employment to the petitioner under compassionate appointment in the place of the petitioner's father late Chinnathambi S/o. Pandi Perumal Pillai who died on 23.02.1983 in the course of employment.

For Petitioner : Mr.Niranjana.S.Kumar

For Respondents : Mr.Guru
Additional Government Pleader

ORDER

This Writ petition has been filed by the petitioner to quash the order passed by the 1st respondent declining to provide compassionate appointment to the petitioner and for a consequential direction to provide him an appointment on compassionate grounds.



2.The Petitioner submits that his father namely Chinnathambi joined as headman in Vellampatti Panchayat at Madurai District and thereafter he cleared the Tamil Nadu Public Service Commission exams and he was posted as Village Administrator Officer (V.A.O) at Mathur village, Madurai District under the second respondents' Office. The petitioner would further submit that on 23.02.1983 the petitioner's father died due to the illness during the course of employment and at that time of death, the petitioner was aged only about 2 years old child and because of his father's sudden demise his entire family was heavily burdened economically.

3.The Petitioner come forward by saying that the petitioner's mother who is an uneducated lady from the rural village left out with no other option or any support had to take all responsibilities to bring up the petitioner. The petitioner has completed S.S.L.C in the year 1997 and Higher Secondary in the year 1999 and is also qualified in type writing in English Senior Grade from Department of Technical Education and further in the year 2001 he has completed the Diploma in Computer Application and B.Com at Madurai Kamaraj University.

4.The Petitioner further submits that the petitioner's mother applied for the employment under the compassionate ground for the petitioner before the 2nd Respondent office on 13.05.1999. The 2nd respondent passed an order in Na.Ka.No.Pa.A.3/110617/2006 dated 28.03.2007 declining the request for compassionate appointment. Thereafter the petitioner's mother has also passed away on 07.12.2004. He would further submit that the petitioner sent a representation to the 1st respondent on 28.01.2008 seeking compassionate appointment and the same was rejected vide order ref Kaditha No: 4168/ Pani 9(1) / 2008-2 dated 13.05.2008 which is challenged in the present writ petition.

5.The respondent has filed the counter by stating that the request of the petitioner cannot be considered for the employment under compassionate ground as per the G.O.(Ms).No: 42 dated 12.03.2007 and the petitioner is ineligible to get employment under the compassionate ground since he has not applied within the period of three years from the date of death of the petitioner's father. Hence, the respondents prayed for the dismissal of the writ petition.

6.Heard Mr.S.Niranjan Kumar, learned counsel for the Petitioner and Mr.Guru, learned Additional Government Pleader appearing for the respondents and have carefully perused the available materials placed on record.

7.The case of the petitioner is that his father namely Chinnathambi was employed as headman in Vellampatti Panchayat at Madurai District and he also appeared for the examination conducted by the Tamil Nadu Public Service Commission and



thereafter he was posted as Village Administrative Officer (V.A.O) at Mathur village, Madurai District under the second respondent's Office. At the time of the death of the petitioner's father on 23.02.1983, this petitioner was aged only about 2 years old child and due to the death of his father's, his whole family is suffering from heavy burdened economically.

8.It is admitted fact that the petitioner's mother was uneducated lady from the rural village and left out with no other option or any support had to take all responsibilities to bring up the petitioner. In fact, the petitioner has completed the S.S.L.C. In the year 1997 and Higher Secondary in the year 1999 and the petitioner also qualified in the English Senior Grade in Typewriting in the year 2001, thereafter, the petitioner also completed Diploma in Computer Application and the B.Com course at Madurai Kamaraj University.

9.In fact, the petitioner's mother has given representation on 13.05.1999 itself seeking compassionate appointment, but that was not provided and her representation was rejected on 28.03.2007 by the respondents without any valid reason. Thereafter, the petitioner's mother was died on 07.12.2004. After that, the petitioner sent a representation on 28.01.2008 to the first respondent seeking employment, but the same was rejected on 13.05.2008 as per the impugned order.

10.Mr.Niranjana.S.Kumar, Learned Counsel for the petitioner has relied upon a judgment reported in **2013 (8) MLJ 190** P.Sathiarman Versus Secretary to Government, Department of Electricity and Others wherein it is held :

"4. The learned counsel for the appellant submitted that the widow applied for appointment on compassionate ground and since she did not complete eighth standard, she was not appointed and the request for appointment was perused by the appellant herein, who had not attained majority at that time and subsequently applied within three years of his attaining majority and therefore, the request is to be considered for providing compassionate appointment.

5. The learned counsel for the respondents contended that appointment on compassionate ground cannot be given dehors the circulars and orders of TNEB. Further, providing appointment to a person on compassionate ground after his attaining majority will amount to keeping a post reserved for him till he attains majority. In this respect, the learned counsel relied on a Division Bench decision of this Court in E.RAMASAMY V. TAMIL NADU ELECTRICITY BOARD AND ORTHERS [2007 WLR 796] .



6. The learned counsel for the appellant contended that since there are contrary decisions of the Hon'ble Apex Court, RAMASAMY's case (supra) is no longer good law. The learned counsel also cited J.JEBA MARY V. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD [2011 (3) LLN 405 (Mad)], where under in similar circumstances, one of us (NPVJ), relying on the decisions of the Hon'ble Apex Court directed TNEB to appoint the son of a deceased employee on compassionate ground.

7. We have carefully considered the rival submissions of either counsel and perused the materials available on record and the impugned order of the learned Single Judge.

8. In T.MEER ISMAIL ALI V. The TAMIL NADU ELECTRICITY BOARD, CHENNAI, (2004 (3) CTC 120) this Court held as under:-

"I am, therefore, of the view that the petitioner's case deserve consideration inasmuch as he had diligently made a claim once in the year 1997 and thereafter, immediately after attaining the age of 18, in the year 2000 and in such circumstances, rejection of his application on the ground that it was not made within three years was not justified."

9. The decision of this Court in MEER ISMAIL ALI (cited supra) was upheld by a Division Bench of this Court in W.A.No.48 of 2004 dated 01.12.2004. Subsequently, the SLP filed against it was also dismissed by the Hon'ble Apex Court vide its judgment in C.A.No.6387 of 2004, dated 04.04.2005.

10. (a) Another Hon'ble Division Bench of this Court in SELVI R.ANBARASI VS. CHIEF ENGINEER (PERSONNEL), T.N.E.B., CHENNAI [2006 (2) M.L.J., 200] it is held as follows:-

"The learned counsel for the petitioner submitted that a similar issue, rejecting the compassionate ground appointment on the ground that the application was submitted beyond three years and the same was rejected earlier on the ground that the petitioner therein has not completed 18 years of age, was considered by this Court in W.P.No.1584 of 2011 and this Court held that the applications having been made within a period of three years and the same having not been considered on the ground that the petitioner therein was not 18 years of age at that time, the subsequent application cannot be rejected



on the ground that the application was submitted within three years. The learned Judge directed the respondents not to treat the second application as an application for compassionate appointment, but it is to be treated as continuation of the application originally submitted. The said judgment is reported in T.Meer Ismail Ali Vs. Tamil Nadu Electricity Board through its Chairman, and others, (2004) 3 C.T.C. 120. This Court, ultimately, directed the respondents to give compassionate appointment to the petitioner therein."

(b) In W.P.No.21512 of 2003 one Indiraniammal challenged the rejection of compassionate appointment on similar ground. The learned single Judge dismissed the writ petition by order dated 4.8.2003 against which the petitioner therein filed W.A.No.3050 of 2003 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 8.3.2005 following the earlier judgments as well as the Supreme Court Judgment reported in (2000) 6 SCC 493(Balbir Kaur v. Steel Authority of India Ltd). Against the said decision Civil Appeal No.2039 of 2006 was filed by the respondent Board herein which was dismissed by the Honourable Supreme Court on 30.3.2010.

(c) Dismissal of another W.P.No.775 of 2004 by order dated 29.1.2005 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 27.6.2006 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 8.4.2009.

(d) Three writ petitions were disposed of by one of us (NPVJ) i.e., W.P.Nos.19914 of 2004, 32409 of 2004 and 10577 of 2005 by common order dated 24.7.2006 wherein similar issue was considered. In respect of the above three writ petitions, which were allowed, writ appeal was filed against one writ petition in W.A.No.1206 of 2006 while implementing the order in respect of other two cases. The said writ appeal was allowed by the Division Bench on 29.9.2006. The respondent in the writ appeal viz., J.Karthick filed review application which was also rejected by the



Division Bench on 25.8.2008. Against the dismissal of the writ appeal as well as rejection of review application, the said J.Karthick filed SLP(C) No.2004-2005/2009 and on 23.2.2009 the SLPs were tagged along with Civil Appeal No.2039 of 2006 viz., Indiraniammal case. Subsequently the said SLP was numbered as Civil Case Nos.5068-5069 of 2009 which was allowed on 30.3.2010 and the said order reads as follows: "Leave granted.

Heard learned counsel for the parties.

These Appeals have been filed against the impugned judgment of the High Court of Madras dated 29th September, 2006 and subsequent order dated 25.8.2008 passed in the review application.

The Division Bench of the High Court has reversed the judgment of the learned single Judge only on the ground of delay who directed compassionate appointment to the appellant. The appellant was a minor at the time of the death of his father and since the mother of the appellant applied within time, we are of the opinion that the appellant after becoming major should have been granted compassionate appointment.

Accordingly, we allow these appeals, set aside the impugned judgment of the Division Bench and restore the judgment of the learned single Judge. No costs." (Emphasis Supplied) From the perusal of the above order it is evident that the order passed by the Division Bench in writ appeal and in the review petition were set aside and the order of the single Judge dated 29.9.2006 was restored.

(e) In W.P.No.18575 of 2006 one of us (NPVJ) had an occasion to consider similar issue and allowed the writ petition on 20.6.2006 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 2.7.2009. The Board filed SLP(C) No.8305 of 2010 which was also dismissed by the Honourable Supreme Court on 6.7.2010. The said candidate viz., P.Venkatesan was given compassionate appointment by order dated 18.8.2010.

(f) Again similar matter was considered by one of us (NPVJ) in W.P.No.29059 of 2003 and relief granted by order dated 7.7.2006, against which also the Board



filed W.A.No.1652 of 2006. The said writ appeal was dismissed by Division Bench (D.Murugesan, J. & S.Nagamuthu, J.) on 30.3.2009."

11. In E.RAMASAMY's case (supra), as argued by the learned counsel for the respondents, the Division Bench negatived the request of the writ petitioner, who was a minor when his father died in harness and who subsequently, applied for appointment on compassionate ground, however, within 3 years of his attaining majority. It is pertinent to note that this decision has been overturned by the Hon'ble Apex Court. This has been noted in MOHANAMBAL V. DIRECTOR, LAND AND SURVEY DEPARTMENT [2011 (2) MLJ 47] [Also see SYED KHADIM HUSSAIN V. STATE OF BIHAR [2006 (9) SCC 195].

12. By relying upon various decisions of Division Bench and the Hon'ble Supreme Court, the very same issue has been dealt with elaborately by one of us (N.Paul Vasanthakumar, J.) in the following cases :

1. MOHANAMBAL V. DIRECTOR, LAND AND SURVEY DEPARTMENT [2011 (2) MLJ 47]

2. J.JEBA MARY V. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD [2011 (3) LLN 405]

3. G.SARAVANAKUMAR VS. THE CHAIRMAN TAMIL NADU ELECTRICITY BOARD, CHENNAI [2011 (2) CWC 83]

4. R.PRASATH V. THE SECRETARY, LABOUR AND EMPLOYMENT DEPT., CHENNAI (W.P.No.3078 of 2006, dated 17.06.2010)

5. M.UMA V. THE CHIEF ENGINEER (PERSONNEL) CHENNAI (W.P.(MD).No.4050 of 2006, dated 29.06.2010) After analyzing the above said case laws, it was held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who have then not attained majority and subsequently, applied within three years of their attaining majority, the request could be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond 3



years of death of the father. It is not the case of the respondents that the family of the appellant is not in indigent status as on today.

13. For the foregoing reasons, the order of the learned Single Judge made in W.P.(MD)No.13980 of 2009 dated 13.09.2010 is liable to set aside.

14. Accordingly, this writ appeal is allowed and the order of learned Single Judge dated 13.09.2010 made in W.P.(MD)No.13980 of 2009 is set aside. The appellant herein is directed to produce a Certificate from the competent authority to the effect that his family is in indigent circumstances as on today, within four weeks and submit the same before the third respondent herein along with a copy of this Judgment. On receipt of the same, based on the representation of the appellant dated 22.12.2009, the respondents shall appoint him in any suitable post within two weeks therefrom."

11.The Learned Counsel for the Petitioner would also rely upon a judgment reported in 2013 Supreme (MAD) 2820 A.Kamtchi Vs. The Chairman, Tamil Nadu Electricity Board and Others, wherein it is held as follows:

8. We have anxiously considered the rival submissions. Perused the materials on record, the impugned order of TNEB and of the Writ Court.

9. The facts are not in dispute. Let us notice, the decisions on the point and resolve the tangle posed before us.

10. In T.MEER ISMAIL ALI V. The TAMIL NADU ELECTRICITY BOAR, CHENNAI, (2004 (3) CTC 120) a learned Single Judge of this Court, now, Hon'ble Mr.Justice F.M.IBRAHIM KALIFULLA, Judge, Supreme Court of India, held as under:- "I am, therefore, of the view that the petitioner's case deserve consideration inasmuch as he had diligently made a claim once in the year 1997 and thereafter, immediately after attaining the age of 18, in the year 2000 and in such circumstances, rejection of his application on the ground that it was not made within three years was not justified."

11. The decision of this Court in MEER ISMAIL ALI (cited supra) was upheld by a Division Bench of this Court in W.A.No.48 of 2004 dated 01.12.2004. Subsequently, the SLP filed against it was also dismissed by the Hon'ble Apex Court in C.A.No.6387 of 2004, on 04.04.2005.



12. Another Division Bench of this Court in SELVI R.ANBARASI VS. CHIEF ENGINEER (PERSONNEL), T.N.E.B., CHENNAI [2006 (2) M.L.J., 200] held as follows:-

"The learned counsel for the petitioner submitted that a similar issue, rejecting the compassionate ground appointment on the ground that the application was submitted beyond three years and the same was rejected earlier on the ground that the petitioner therein has not completed 18 years of age, was considered by this Court in W.P.No.1584 of 2011 and this Court held that the applications having been made within a period of three years and the same having not been considered on the ground that the petitioner therein was not 18 years of age at that time, the subsequent application cannot be rejected on the ground that the application was submitted within three years. The learned Judge directed the respondents not to treat the second application as an application for compassionate appointment, but it is to be treated as continuation of the application originally submitted. The said judgment is reported in T.Meer Ismail Ali Vs. Tamil Nadu Electricity Board through its Chairman, and others, (2004) 3 C.T.C. 120. This Court, ultimately, directed the respondents to give compassionate appointment to the petitioner therein."

13. In E.RAMASAMY V. TAMIL NADU ELECTRICITY BOARD AND ORTHERS [2007 WLR 796], a Division Bench of this Court negatived the request of the writ petitioner, who was a minor when his father died in harness and who subsequently, applied for appointment on compassionate ground, however, within 3 years of his attaining majority. This decision was overturned by the Hon'ble Apex Court. This has been noted in MOHANAMBAL V. DIRECTOR, LAND AND SURVEY DEPARTMENT [2011 (2) MLJ 47] [Also see SYED KHADIM HUSSAIN V. STATE OF BIHAR [2006 (9) SCC 195].

14. The very same issue has been dealt with elaborately by one of us (N.Paul Vasanthakumar, J.) in the following cases, wherein, my learned Brother relied on certain Division Bench decisions and also decisions of the Hon'ble Apex Court.



2. J.JEBA MARY V. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD [2011 (3) LLN 405]

3. G.SARAVANAKUMAR VS. THE CHAIRMAN TAMIL NADU ELECTRICITY BOARD, CHENNAI [2011 (2) CWC 83]

4. R.PRASATH V. THE SECRETARY, LABOUR AND EMPLOYMENT DEPT., CHENNAI (W.P.No.3078 of 2006, dated 17.06.2010)

5. M.UMA V. THE CHIEF ENGINEER (PERSONNEL) CHENNAI (W.P. (MD) .No.4050 of 2006, dated 29.06.2010)

15. My learned Brother in his said decisions reviewed the case-law on the point and held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who has then not attained majority and subsequently, applied within three years of attaining majority, such request shall be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond 3 years of death of the father.

16. Now, cleared of the legal position, it is pertinent to note that within three years of her husband's death, Thirumalai, the mother of the appellant has applied for her appointment on compassionate ground, she was not appointed for want of vacancy, so, she was not denied job, now, she cannot be appointed because of her age, within three years of his attaining majority the appellant had applied for appointment. The legal heirs of the deceased employee, namely, appellant's mother and his sister have also given their no objection for appellant's appointment. The appellant is also well within the eligible age for appointment. In the circumstances, the impugned order of the third respondent, dated 1.2.2010 and of the Writ Court, dated 13.9.2010 are unsustainable in law.

17. In the result, this Writ Appeal is allowed. The impugned order of the third respondent, dated 1.2.2010 and of the Writ Court, dated 13.9.2010 made in W.P.(MD) No.2374 of 2010, are set aside. The appellant is directed to produce a certificate from the competent



authority as to the indigent circumstances of his family within four weeks to the third respondent and on receipt of the same, the respondents shall appoint him in any suitable post within four weeks therefrom.

12. Therefore, the learned counsel appearing for the petitioner has submitted that as per the judgments rendered by this Court and the Hon'ble Apex Court the petitioner is eligible for appointment under the compassionate appointment.

13. The learned Additional Government Pleader appearing for the respondents contended firmly that the case of the respondents cannot be considered in the light of G.O.Ms.No.560 Labour and Employment Department dated 03.08.1977 and G.O.Ms.No.120 Labour and Employment Department dated 26.06.1995, wherein the time stipulated for submission of application on compassionate grounds is only three years and any application received thereafter cannot be considered. Further the Learned Additional Government Pleader also relied upon a Judgment reported in 2007 (9) SCC 571 State Bank of India and Others -vs- Jaspal Kaur, it has been held that the matter should be decided within the parameters of the scheme prevailing when an application for compassionate appointment was filed and not the date of decision of this Court. Hence he vehemently contended that the writ petition has to be dismissed.

14. The learned counsel for the Petitioner also has reiterated the proposition that this Court as well as the Hon'ble Apex Court has time and again said that no hard and fast rules can be applied in the case of Compassionate appointment. Further it is the case of the petitioner that he was a minor at the time of death of his father and that an application has been submitted by his mother claiming compassionate appointment for the petitioner. But it was rejected on the ground that the petitioner is still a minor and that he could not be provided with an appointment. Subsequently after attaining majority the petitioner has given a representation to the 1st respondent seeking appointment on compassionate grounds upon the death of his father. But unfortunately the 1st respondent has rejected the application stating that he has survived for 16 years and hence he is not in a pathetic condition and hence his request could not be considered, which is according to me it is totally non application of mind on the part of the respondents and contrary to the above judgments rendered by this court as well as the Hon'ble Apex Court as extracted from the precedents above referred to and hence the impugned order is liable to be set aside and the petitioner is eligible for appointment in any suitable post in the respondents department under the compassionate appointment.



(a) the writ petition is allowed and the impugned order of the first respondent dated 13.05.2008 vide ref No.Lr.No.4168/Pani/9(1) 2008-2 is quashed;

(b) consequently, the respondents are hereby directed to appoint the petitioner in any suitable post under compassionate ground, in the Respondents Departments.

(c) the respondents are directed to complete the exercise within a period of four weeks from the date of receipt of a copy of this order.

16. Accordingly, this writ petition is allowed with the above direction. No costs.

Sd/-

Assistant Registrar(As)

/True copy/

Sub Assistant Registrar

To

1.The Secretary,
The State of Tamil Nadu
Revenue Department,
St. George Fort,
Secretariat,
Chennai.

2.The District Collector
Madurai District
Madurai - 20

+1cc to Mr.Niranjan S.Kumar, Advocate SR.No.78760

vsa/skn

SH:SS3:SAR I:06.01.2017:12P/4C

W.P. (MD) .No.7063 of 2013

02.12.2016