

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11802 of 2016 and

W.M.P.No.10183 of 2016

Neaya (Transgender Female)

...Petitioner

Versus

1. The District Primary Educational Officer,
Salem - 7.
 2. The Assistant Primary Educational Officer,
Salem.
 3. The Accountant General,
Office of the Accountant General (A&E)
Chennai - 600 018.
- ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus directing the first and second respondents to appoint the petitioner in appropriate post under the compassionate appointment.

For petitioner : No Appearance

For respondents : Mr.R.S.Selvam for R1 & R2
Mr.T.S.Selvarani for R3

O R D E R

The relief sought for in this writ petition is for a direction to the respondents 1 and 2 to appoint the petitioner in the appropriate post under compassionate grounds.

2. The mother of the writ petitioner was an employee of the Education Department and she died on 10.11.1999 on account of ailment. The petitioner states that her father also passed away on 31.07.2000. The brother of the writ petitioner was sanctioned with the Family Pension till the age of 25. Thereafter, the writ petitioner was granted pensionary benefits till the year 2006. At the time of death of her mother, the writ petitioner was a minor and on attaining the age of majority, an application seeking compassionate appointment was filed. The brother and sister of the writ petitioner have also offered no objection for the petitioner to seek appointment on compassionate grounds.

3. On 10.12.2014, an application was made seeking appointment on compassionate grounds. But no rejection order has been passed. Further, the respondents have not passed any orders on the application submitted by the writ petitioner. Hence, the present writ petition.

4. This Court has to consider the claim of the writ petitioner for compassionate appointment on the terms and conditions of the scheme. Compassionate Appointment is a special scheme, provided in order to mitigate the indigent circumstances arising on account of the sudden demise of the Government Servants, while in service. Such being the scope of the Scheme, the appointment of Compassionate Ground cannot be undertaken after a lapse of many years. Any appointment of Compassionate Ground has to be made within a reasonable period, to say three years or five years, but not later than that. In the case on hand, the mother of the petitioner died in the year 1999 and subsequently, the brother of writ petitioner as well as the petitioner herself received pension benefits till the year 2006. Thus, the question of considering the indigent circumstances now after a lapse of about 18 years from the date of death of the deceased employee does not arise at all. Thus, the inference has to be drawn that the family was not in indigent circumstances. The legal presumption is that the penury of the writ petitioner vanished and thus, the appointment under Compassionate Ground is not required and cannot be granted.

5. In this regard, it is beneficial to cite the Judgment of the Hon'ble Division Bench of this Court in The Inspector General of Prisons vs. P.Marimuthu {2016 (5) CTC 125}. In paragraphs 36 to 41, the Division Bench held as follows:

36. In National Institute of Technology v. Niraj Kumar Singh reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were

other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

"21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LR's. And Ors., (2005) 12 SCC 1]"

37. Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee,

the applicant should be an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in Sushma Gosain v. Union of India reported in 1989 (4) SCC 468.

41. In the result, the Writ Appeal is allowed. No costs. Order made in W.P(MD)No.6538 of 2009 dated 22.04.2014 is set aside. Consequently, connected Miscellaneous Petition is closed."

6. In view of the legal principles laid down in the above judgment and considering the facts and circumstances of this case, the writ petitioner is not entitled for any Compassionate Appointment and accordingly, the prayer as such sought for, deserves no further consideration.

7. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mrr

To

1. The District Primary Educational Officer,
Salem - 7.
2. The Assistant Primary Educational Officer,
Salem.
3. The Accountant General,
Office of the Accountant General (A&E)
Chennai - 600 018.

+1cc to Government Pleader Sr.62881

W.P.No.11802 of 2016

RV(CO)
rvr 10/11/2017