

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.196 of 2017
and
C.M.P.No.3158 of 2017

V.Senthil

... Appellant/Petitioner

... Vs ...

1. The Director, Commissioner of Survey & Settlement,
Survey House, Chepauk,
Chennai - 5.
 2. The Additional Director,
Survey & Records Department,
Survey House, Chepauk,
Chennai - 5.
 3. The Assistant Director,
District Survey Office,
Kanchipuram,
Kanchipuram District.
- ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of The Letters Patent Act, against the order dated 02.12.2016 passed by this Court in W.P.No.19570 of 2016.

Prayer in W.P.No 19570 of 2016:

Writ of Certiorarified Mandamus calling for the records relating to the impugned letter in Na.Ka.No 1/9729/2016 (ni.A) dated 27.04.2016 issued by the 1st respondent and quash the same and direct the 1st respondent to reconsider afresh application of the petitioner for appointment on compassionate grounds.

For Appellant : Mr.R.Singaravelan, Senior Counsel
for Mrs.M.Srividhya
For Respondents: Mr.K.Venkatramani,
Additional Advocate General
Assisted by Mr.R.Prathap Kumar,
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

Writ Appeal is directed against the order dated 02.12.2016 dismissing the writ petition filed by the appellant in W.P.No.19570 of 2016, which was filed to quash the letter in Na.Ka.No.1/9729/16 (Ni.A.) dated 27.04.2016 of the first respondent and to direct the first respondent to reconsider afresh the application of the writ petitioner for appointment on compassionate grounds.

2. The brief facts of the case is that the appellant/writ petitioner filed an application before the respondents seeking compassionate appointment, since his father died in harness. However, the application was rejected on the ground that it was submitted after a lapse of nine years from the date of death of the father on 09.01.2008. The application was made by the petitioner under the guise of the observation made by the respondents while declining the request of compassionate appointment by the petitioner's sister stating that if a separate application is made by the petitioner, the same will be considered, provided the petitioner satisfies the eligibility criteria. However, the application of the petitioner made on 12.01.2016 was, ultimately, rejected on the ground that it was not made within three years from the date of death of the Government servant. Challenging the said order, the present writ appeal has been filed.

3. Heard the learned counsel for the parties for some time and Mr.K.Venkatramani, learned Additional Advocate General, who takes notice on behalf of the respondents.

4. In paragraph No.6, the learned Single Judge has observed as follows:-

"6.

In the case on hand, sister of the petitioner had earlier submitted application for compassionate appointment and since it was rejected, the petitioner has chosen to submit an application, that is after 9 years from the date of death of his father. Hence, I do not find any merit in this writ petition."

5. The learned Single Judge dismissed the writ petition relying upon the decision of the Division Bench of this Court in the case of Inspector General of Prisons, Tiruchirapalli District Vs. P.Marimuthu [2016 (5) CTC 125], wherein, at paragraph No.39, it is observed as follows:-

"39.

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."

6. There can be no second opinion that the application for compassionate appointment made after a lapse of three years or even upto five years, as the case may be, cannot be considered. However, it is not in dispute that when a Government servant died in harness, one of his legal heirs is entitled to be provided with a job on compassionate ground, subject to requisite qualification, for the survival of the family. In the instant case, after the death of the Government Servant, the wife has made an application immediately seeking appointment for the daughter, which was kept pending for a long time and as the daughter got married, the application was ultimately rejected on that ground. It is to be noted that before the rejection of the application, the daughter of the deceased Government servant has made a request to consider the appointment for her brother, the petitioner herein and while declining to the said request, the respondents had given liberty to the effect that if the petitioner makes a separate application, the same would be considered subject to his fulfilling the eligibility criteria.

7. Therefore, in the peculiar facts and circumstances, a distinction can be made to the proposition that the said application could be treated in continuation of the application made in time by the wife of the deceased Government servant. It appears that after the death of the Government servant on 09.01.2008, the wife of the deceased Government servant has made an application on 11.12.2008 for compassionate appointment to her daughter, but it was not considered as the daughter was 13 years of age at that time and after much deliberation, the application was rejected on 28.12.2015 on the ground that she got married. However, in the said order, a rider was added that the petitioner would be considered for appointment if a separate application is made, subject to his fulfilling eligibility criteria. Therefore, we are of the view that the appointment of the petitioner on compassionate ground can be considered for two reasons, namely, that the application of the petitioner should be treated in continuation of the application submitted in time by the wife of the deceased Government servant seeking appointment to her daughter, the petitioner's sister and secondly that the time period of three years limitation should be reckoned from the date of attaining the majority by the petitioner. Admittedly, in this case, both the criteria are

satisfied and hence, the petitioner's case can be considered for compassionate appointment.

8. Therefore, when the Scheme provides for compassionate appointment for the family of the deceased Government Servant who died in harness, then one person in the family, who has to take care of the family after the death of the Government servant, would be eligible to be appointed. The application submitted by the petitioner could have been taken into consideration in continuation of the application already submitted by the widow of the deceased Government servant and if the person, who has to take care of the family, was a minor at the relevant point of time, he would be eligible to be appointed even after attainment of the age of majority and the limitation of three years would apply only from the date of attaining the age of majority.

9. In that view of the matter, while modifying the order of the learned Single Judge, we direct the respondents authorities to re-consider the issue and pass orders within a period of three months from the date of receipt of a copy of this order.

10. The Writ Appeal is disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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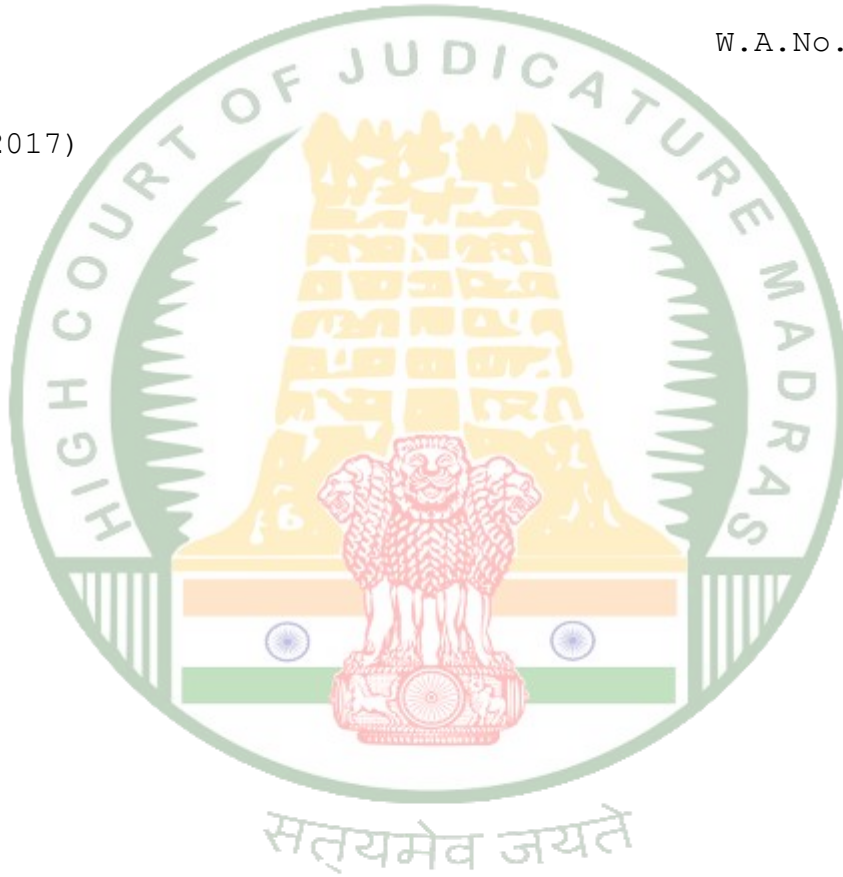
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+1 Cc to Ms. Srividya, Advocate sr 68688.
+1 CC to Govt. Pleader sr 69459.

W.A.No.196 of 2017

CA(CO)
sp(02/11/2017)



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