

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.15037/2011 & M.P.No.1/2011

A.Manikandan

...Petitioner

..Vs..

1.Government of Tamilnadu
represented by Secretary to Government,
Animal Husbandry Dairying and Fisheries Dept,
Secretariat,
Chennai-600 009.

2.The Commissioner of Animal Husbandry and
Veterinary Services Health Services,
Chennai-600 006.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent relating Na.Ka.No.44493/N3/07 dated 09.03.2009, quash the same, in so far as it relates to the petitioner herein, and issue consequential directions to the respondents to provide appointment to the petitioner on Compassionate Grounds in a suitable post commensurate with his educational qualification.

For petitioner : Mr.G.Elanchezhiyan

For Respondents: Mr.A.Zakir Hussain, GA

ORDER

Heard Mr.G.Elanchezhiyan, learned counsel appearing for the petitioner, and Mr.A.Zakir Hussain, learned Government Advocate appearing for the respondents.

2.The prayer in the writ petition is for Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating in NA.KA.No.44493/N3/07 dated 09.03.2009, quash the same, insofar as it relates to the petitioner herein and to issue consequential direction to the respondents to provide appointment to the petitioner on Compassionate Grounds in a suitable post.

3.The short facts of the writ petition is as follows.

4.The petitioner's father, while he was working as Livestock Assistant at Chinnasalem in the Department of Animal Husbandry and Veterinary Services, died on 21.08.1996 leaving behind his wife and four children including the petitioner and at the time of death of his father, the petitioner was only ten years old. However, his elder sister named Panchalai had become major. Therefore, the widow of the deceased had submitted an application on 16.07.1999, seeking employment of her elder daughter Panchalai on compassionate ground. The said application was returned to the widow of the deceased ie. the mother of the petitioner stating that the said application should be sent through the Office where her husband was working lastly. Accordingly, the elder daughter Panchalai of the deceased, had submitted her application on 19.08.1999 seeking compassionate appointment. In response to the said application, the respondent by letter dated 03.09.2001 directed her to produce a certificate from the Tahsildar concerned stating that the said Panchalai is unmarried.

5.In the meantime, by virtue of issuance of G.O.Ms.No.212, Personnel and Administrative Reforms Department, dated 29.11.2001, the Government had put a ban for making recruitment including compassionate appointment. Therefore, the issue was not taken up for consideration during that period. In the mean time, since the petitioner had attained majority, during the year 2003, he had made an application on 28.09.2005 seeking compassionate appointment and his elder sister Panchalai had withdrawn her application on 01.07.2005 as she also got married in the meanwhile.

6.The said application submitted by the petitioner on 28.09.2005 along with some similarly placed applications had been rejected vide common order dated 09.03.2009, impugned herein, whereby the 2nd respondent has rejected the applications including the application of the petitioner on the ground that the application for compassionate appointment was not submitted by the petitioner within three years period from the date of death of the Government servant, challenging the said order, the present writ petition has been filed.

7.The learned counsel appearing for the petitioner would submit that admittedly, the petitioner was minor at the time of the death of his father and hence, the widow of the deceased filed an application (i.e. On 16.07.1999) within the period of 3 years from the date of death of her husband which occurred on 21.08.1997. Thereafter, the application submitted by the elder daughter of the deceased on 19.08.1999, was not immediately processed and decided for want of certificate that the said elder daughter did not get married at the relevant point of time. In the meantime, the Government imposed ban for appointments even on compassionate grounds also as per G.O.Ms.No.212, Personnel and Administrative Reforms Department,

dated 29.11.2001. Therefore, the question of seeking any appointment at that time did not arise.

8. In the meanwhile, since the petitioner, being the only male legal heir of the deceased Government servant, became major on 01.06.2003, it was decided by the family that the petitioner can make an application and as the continuing process the earlier application filed by his sister was withdrawn on 01.07.2005 and the petitioner had made an application on 28.09.2005.

9. Therefore, the learned counsel for the petitioner would contend that the application dated 28.09.2005 submitted by the petitioner is not a fresh application, and it is a continuous one of the earlier application submitted originally by mother and subsequently by his elder sister. Therefore, the learned counsel for the petitioner would submit that the reason cited in the impugned order, that the application was not filed within the period of three years from the date of the death of the Government servant cannot be countenanced.

10. In support of the said claim, the learned counsel appearing for the petitioner would rely upon two decisions of this Court. Firstly, the decision reported in (2013) 8 MLJ 190 [P.Sathiaraman .Vs. Secretary to Government, Department of Electricity and Others] and secondly the decision reported in (2016) 2 MLJ 570 [S.Ramakrishnan .Vs. Chief Educational Officer, Tiruvelveli District and Others].

11. By relying upon these two decisions, the learned counsel for the petitioner would submit that the principle laid down in the said judgments is squarely applicable to the facts of the present case, and hence prays for appropriate orders.

12. Per contra, the learned Government Advocate appearing for the respondents would contend that even though the application was originally made by the widow of the deceased within three years period, that application was rejected for want of submitting the same through appropriate channel. Thereafter, a fresh application was submitted by the elder daughter on 19.08.1999, and when that application was taken up for process, it was found that the necessary certificate stating that she (daughter) did not get married, was not produced. Unless such certificate is produced she would not be entitled to claim compassionate appointment. The said certificate was crucial and essential one, and therefore, the same was sought to be produced from the applicant that is the daughter of the deceased. However, she did not produce any such certificate till a ban was imposed on 2011. Thereafter, the ban order was in force for some years and ultimately in the year 2005, the daughter has withdrawn her application itself. Thereafter, the petitioner had filed an application on

28.09.2005, that is well beyond three years period from the death of the father of the petitioner. Therefore, the said application made by the petitioner cannot be construed as an application in a continuous process taking the earlier applications filed by the widow as well as the daughter of the deceased. Therefore, since admittedly the application made by the petitioner was not within three years period from the date of death of her father, it was liable to be rejected in view of the rules which were in vogue and therefore, after getting the clarifications from the Government, the said application was rejected.

13. In this regard, the learned Government Advocate submitted that it is not only the case of the petitioner, several other applications, which had not been submitted within three years period, had also been rejected, by the very same impugned order. Hence, there is every justification on the part of the respondents to sustain the impugned order and therefore he prays for the dismissal of the writ petition.

14. This Court has considered the rival submissions made by both sides and perused the materials placed.

15. The only contentious issue raised by the petitioner is that, whether the respondent is right in rejecting the application of the petitioner solely on the ground that the said application was not submitted within three years period from the date of death of his father.

16. The facts mentioned above are not in much controversy.

17. It is no doubt, that at the time of death of the father of the petitioner, the petitioner was only ten years old. He became major in the year 2003. It is not the case that the petitioner had made application first time on 28.09.2005, and before which no one from his family made an application.

18. As has been rightly pointed out by the learned counsel for the petitioner, the widow of the deceased submitted application seeking compassionate appointment to her elder daughter on 16.07.1999, though the said application was returned for want of forwarding through the appropriate channel. Thereafter, elder daughter Panchalai had made an application on 19.08.1999, the said application was pending for one reason or the other. The Government in G.O.Ms.No.212 dt.29.11.2011, during the pendency of the said application, which was pending consideration before the respondents, has put a ban on appointment. The petitioner being a male child of the deceased and he became major in 2003, and in the meanwhile the ban imposed by the Government was also lifted, hence, it was decided in the family of the deceased that the male child can

get the compassionate appointment after his father death. Therefore, a right decision had been taken and accordingly an application was made on 29.08.2005 by the petitioner and before which, enabling the petitioner to maintain the application, the earlier application filed by the daughter had been withdrawn on 01.07.2005.

19. In this regard, the principle laid down by the Division Bench of this Court reported in (2013) 8 MLJ 190 (cited supra) can be referred to.

20. In the said case also a similar situation arose where earlier application was filed within three years of the death of her husband and appointment could not be made to the widow. Subsequent application was filed by their son after having become major and when the said application was rejected on the ground of not filed within three years period, the petitioner therein has approached this Court. In the said circumstances, the Division Bench, after analysing the issue in detail, has passed the following order:-

"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 Vasantha Kumar, J.) in the following cases:

1. Mohanambal .v. Director, Land and Survey Department, (supra)
2. J. Jeba Mary .v. The Chairman, Tamil Nadu Electricity Board, (supra)
3. G. Saravanakumar .v. The Chairman Tamil Nadu Electricity Board, Chennai, 2011 (2) CWC 83: LNIND 1011 MAD 1961
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. No costs".

21. In yet another judgment, reported in (2016) 2 MLJ 570 (cited supra) a learned judge has taken a similar view and held as follows:

"6. It is not in dispute that the mother of the petitioner made application dated 01.09.2006 within a period of three years from the date of death of the father of the petitioner. Therefore the subsequent application dated 29.09.2006 seeking compassionate appointment to the petitioner has to be read as the continuation of the said representation dated 01.09.2006. It cannot be said that the application was made seeking compassionate appointment beyond 3 years in view of the first application dated 01.09.2006. It is a different matter if the first application itself was made on 29.09.2006 seeking compassionate appointment. Hence, I am not in agreement with the submission made by the learned Government Advocate that the application was made beyond 3 years. In fact, no such reason is given in the impugned order. Furthermore, the only reason given in the impugned order is that since the application dated 01.09.2006 was made requesting compassionate appointment to the mother of the petitioner, thereafter, there cannot be a change of nomination for providing compassionate appointment. In this connection, it is useful

to extract the following paragraph of the impugned order:-

“தேற்காணும் விண்ணப்பம் ஆய்வ, செய்ததில் முதலில் வேலைகேட்டு விண்ணப்பித்த திருமதி.சு.வேலம்மாள் என்பவர் பணிவாய்ப்பு, கோரி விண்ணப்பிக்காமல் அன்னார் மகனும் 5-வது வாரிசுமான சு.இராமிகருஸ்ணனுக்கு பணி வாய்ப்பு, கோரி விண்ணப்பித்து உள்ளார், அன்னார் விண்ணப்பம் அரசு கடிதம் எண்.38454/பணி 9(1) 2007 நாள், 27.12.2007-ல் தற்போது நடைமுறையில் உள்ள அரசாணைகளின் படியும், இறந்த அரசு ஊழியரின் ஒரு வாரிசுதாரருக்கு விண்ணப்பித்துவிட்டு பின்னர் மற்றொரு வாரிசுதாரருக்கு (ரூவவடியேவளைந டநபயட கயைசை) பணி நியமனம் வழங்க இத்திட்டத்தில் வழிவகை செய்யப்படவில்லை என்ற விபரம் தெரிவிக்கப்படுகிறது.”

The Government letter dated 27.12.2007 is relied on, in the impugned order. In my view, such procedure is arbitrary. Simply the request for compassionate appointment cannot be rejected like this. It is a different matter if compassionate appointment is provided to the mother and the mother did not take up the employment and she wanted to provide the employment to the petitioner, who is the son. On the other hand, the application dated 01.09.2006 seeking compassionate appointment was only under consideration. Before the same was acted upon, request was made changing the nomination. With regard to this, it has to be only seen that the other dependents are not opposing for giving compassionate appointment to the dependent concerned. As rightly pointed out by the learned counsel for the petitioner, the judgments relied on by him, supports his claim. Hence the impugned order dated 06.01.2014 passed by the second respondent, is quashed and a direction is issued to the respondents to provide compassionate appointment to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order, if he is otherwise eligible.

7.The writ petition is allowed in the above terms. No costs. Consequently, the connected miscellaneous petition is closed”.

22.If the said principles as held by this Court, referred to above, is applied to the facts of this case, then

the natural corollary would be that the application submitted by the petitioner on 29.08.2005, can only be treated as a continuous process of the earlier application filed by widow/daughter of the deceased, which were, admittedly within the period of three years from the date of the death of the Government servant. Therefore, the application made by the petitioner dated 29.08.2005, of course after he became major in the year 2003, cannot be held to be an application beyond time or beyond three years period. Hence this Court is of the considered view that the rejection of the petitioner's application, made through the impugned order, is totally unjustifiable and therefore, the impugned order, insofar as the petitioner is concerned, is quashed and the matter is remitted back to the respondents for reconsideration. While making such reconsideration, the respondents are expected to adhere to the principles laid down by this Court in the said judgments, cited supra, and based on which, a pragmatic decision has to be taken by the respondents, considering the facts and circumstances of the family of the petitioner and make suitable orders thereon for compassionate appointment within a period of eight weeks from the date of receipt of a copy of this order.

23.This writ petition is allowed to the extent indicated above. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Secretary to Government of Tamilnadu
Animal Husbandry Dairying and Fisheries Dept,
Secretariat,Chennai-600 009.

2.The Commissioner of Animal Husbandry and
Veterinary Services Health Services,
Chennai-600 006.

+1 cc to M/s.G.Elanchezhian,advocate,sr.17410

+1 cc to Govt.Pleader,sr.17353.

rsi(co)
krd 19/4

W.P.No.15037/2011