

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.12027 of 2014

D.Varalakshmi

.. Petitioner

Vs.

The Additional Commissioner of Police,
Traffic Zone,
Vepery, Chennai-600 007.

.. Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records connected with the proceedings issued in Mu.Mu.No.Pa.Pe-III-Po.Va/228/7010/2010 dated 04.02.2014 passed by the respondent herein and quash the same and consequently direct the respondent to appoint the petitioner's son on compassionate ground.

For Petitioner .. Mr.Ali Hassan Khan

For Respondent .. Mr.Zakkir Hussain
Additional Govt. Pleader

ORDER

The petitioner has approached this Court seeking for the following relief:

'To issue a writ of certiorarified mandamus to call for the records connected with the proceedings issued in Mu.Mu.No.Pa.Pe-III-Po.Va/228/7010/2010 dated 04.02.2014 passed by the respondent herein and quash the same and consequently direct the respondent to appoint the petitioner's son on compassionate ground'.

2. The case of the petitioner is as follows:

The petitioner is the widow of the deceased employee employed under the respondent. She was married to one Duraikannu and from the wed lock they have one son and a daughter. Her husband while working in the police force died in harness on 13.05.2005. At the time of his death, he was working as Head Constable. Immediately, on the death of the petitioner's husband, a request was made to the competent authority, seeking appointment on compassionate grounds for her son. According to her, she made a request to the Commissioner of Police, Chennai and the petitioner was directed to meet the respondent herein for pursuing her claim. When the petitioner met the respondent, she was informed that there was another lady, who was claiming to be the legally wedded wife of the petitioner's late husband Duraikannu. Due to the said reason, the respondent had refused to receive the petitioner's application for compassionate appointment. Since the status of the petitioner was being questioned, she immediately took steps to approach the competent Civil Court for declaration declaring that she was the legally wedded wife of late.Duraikannu. Original suit in O.S.No.65 of 2005, was decreed in favour of the petitioner on 25.03.2009 and the declaration sought has been granted by the learned City Civil Court.

3. After the Civil Court passed an order in the year 2009, the petitioner gave a representation to the respondent on 07.05.2010, seeking for compassionate appointment. In response to the same, the petitioner was directed to submit certain documents for considering her claim for compassionate appointment for her son. In the meanwhile, the son of the petitioner has also represented to the Commissioner of Police on 21.06.2013 to consider his application for compassionate appointment. While the authorities concerned were examining the claim of the petitioner's son for compassionate appointment by proceedings dated 04.02.2014, the same was rejected only on the ground that the application was made five years after the death of the deceased Constable and therefore, the application could not be taken up for consideration on compassionate grounds as per the Government orders. The above said communication dated 04.02.2014 is under challenge in the present writ petition.

4.The learned counsel for the petitioner would submit that immediately after as the death of the deceased Constable, a request was made for compassionate appointment, but the authorities had refused to receive any application only on the ground that there was a rival claim by an another lady, that she was the legally wedded wife of the deceased Constable. In those circumstances, the application was not entertained by the competent authorities. The learned counsel would further submit that this fact was not disputed by the respondent in their counter affidavit filed in the present writ petition. After obtaining the decree from the Court, declaring the status of

the petitioner that she being the legally wedded wife of the deceased Constable, an application was submitted for consideration, which application was not a fresh application and only a renewal of the request. Therefore, the authorities ought to have taken into consideration the original attempt made by the petitioner seeking compassionate appointment and not from the date of the second application. Therefore, the learned counsel would submit that although the authorities initially directed the petitioner to submit certain documents for consideration but later on they have rejected the application only on the ground of delay in submission of the application without proper application of mind with regard to the claim of the petitioner on merits. In the said circumstances, he would submit that rejection cannot therefore be countenanced both in law and on facts and the same is liable to be interfered with.

5. Upon notice, Mr. A. Zakkir Hussain, the learned Additional Government Pleader entered appearance on behalf of the respondents and filed a detailed counter affidavit.

6. As rightly contended by the learned counsel for the petitioner the fact that the petitioner had approached the competent authority immediately after the death of her husband in the year 2005 had not been specifically disputed in the counter affidavit. More over from the circumstances explained by the learned counsel for the petitioner, it can be safely inferred that an attempt indeed was made but because of the circumstances as explained above, an application in writing could not be submitted in time. Since the dispute has been resolved by the civil Court in favour of the petitioner in the year 2009, and thereafter, when an application was fairly made renewing their request, the same cannot be treated as one of time barred for the purpose of rejecting the claim of the petitioner.

7. In view of the above discussion, this Court has no hesitation in allowing the writ petition. Therefore, the impugned proceedings issued in Mu. Mu. No. Pa. Pe-III-Po. Va/228/7010/2010 dated 04.02.2014 passed by the respondent is set aside. There shall be a consequential direction to the respondent to consider the claim of the petitioner for compassionate appointment on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

8. The writ petition is disposed of, with the above direction. No costs.

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Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

The Additional Commissioner of Police,
Traffic Zone,
Vepery, Chennai-600 007.

+2CC to MR.ALI HUSSAN KHAN Advocate SR.NO.68577
+1CC to GOVT PLEADER SR.NO.68873

W.P.No.12027 of 2014

SSI [CO]
MK:26/10/2017



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