

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.09.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.16962 of 2015
and M.P.No.1 of 2015

V. Selvalakshmi

.. Petitioner

vs

1. The State of Tamilnadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
EVK Sampath Malligai,
DPI Compound, College Road,
Chennai-06.
3. The District Elementary Educational Officer,
Ariyalur-621 704.
4. The District Educational Officer,
Udayarpalayam,
Ariyalur District.
5. The Assistant Elementary Educational Officer,
Office of the Elementary Education,
T.Palur, Ariyalur District-612 904.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus or any other writ in the nature of a writ calling for the entire records from the 3rd respondent relating to the impugned order bearing Na.Ka.No.2707/(A1)2014, dated 16.05.2015 and quash the same as illegal, arbitrary, in-operative in law and further directing to the 3rd and 4th respondents to give junior assistant post to the petitioner in the way of compassionate appointment.

For Petitioner : Mr. R. Arumugam
For Respondents : Mr.S. Gunasekaran
Addl.Government Pleader

O R D E R

The order of rejection dated 16.05.2016, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in this writ petition.

2. The impugned order states that the application seeking compassionate appointment was filed by the writ petitioner only on 03.05.2000, after a lapse of three years from the date of death of father of the writ petitioner. Therefore, as per Government orders, the application seeking compassionate appointment cannot be considered.

3. The learned counsel appearing for the writ petitioner made a submission that the father of the writ petitioner was working as Head Master and died on 30.06.1995, while he was in service. The mother of the writ petitioner made representations on 01.07.1996 and on 10.05.1997 respectively and the same was not considered by the respondent. As the writ petitioner, at the time of death of her father was minor, after attaining the age of majority, the writ petitioner made an application seeking compassionate appointment on 03.05.2000. Thus, there is no irregularity in submission of the application and the respondent ought not to have rejected the same on the ground that it was not submitted within a period of three years from the date of death of the Government employee.

4. The learned Special Government Pleader appearing on behalf of the respondents made a submission that as per G.O.Ms.No.560, Labour and Employment Department 1997, the appointing authority are responsible for ascertaining indigent circumstances of the family of the deceased Government servant. In the case on hand, the wife of the deceased employee has not submitted any application seeking compassionate appointment immediately and further, she is receiving the family pension and received all other retired and terminal benefits from the Government. This apart, out of the four legal heirs, the third daughter of the deceased Government servant Ms.V.Murali has applied for employment on compassionate ground after attaining the age of majority. Therefore the application was rejected on the ground that the same was not submitted within a period of three years.

5. Further, there was no existence of indigence in the family of the deceased employee. This apart, the writ petitioner filed the writ petitions in W.P.No.28896 of 2014 and W.P.No.9879 of 2015 and the same was disposed of, with a direction to consider the representation. Pursuant to that the impugned order was passed in proceedings dated 16.05.2016 stating that the application was not submitted within a period of three years from the date of demise of the deceased employee. 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, 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 LRs. 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. Accordingly, the writ petition stands dismissed. However no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

rpl

To

1. The Principal Secretary,
State of Tamilnadu,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
EVK Sampath Malligai,
DPI Compound, College Road,
Chennai-06.
3. The District Elementary Educational Officer,
Ariyalur-621 704.
4. The District Educational Officer,
Udayarpalayam,
Ariyalur District.
5. The Assistant Elementary Educational Officer,
Office of the Elementary Education,
T.Palur, Ariyalur District-612 904.

+1 CC to Mr.R. Arumugam, Advocate sr 63496.

+1 CC to govt. Pleader sr 64107.

WEB COPY

W.P.No.16962 of
2015
and M.P.No.1 of 2015

CA(CO)
sp(11/10/2017)