

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 18.12.2017
CORAM
THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.28574 of 2017

Eswari

... Petitioner

Vs

1.The District Collector,
District Collector's Office,
Erode.

2.The Revenue Divisional Officer,
Erode.

3.The Tahsildar,
Perundurai Taluk,
Erode District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for the records relating to the 1st respondent vide proceedings No.N.K.33063/2016/A5 dated 22.08.2017 and to quash the same and consequently direct the 1st respondent to appoint the petitioner on compassionate ground.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

O R D E R

This writ petition is directed against the impugned order dated 22.08.2017 in proceedings No.N.K.33063/2016/A5 passed by the District Collector, Erode, rejecting the request of the petitioner seeking compassionate appointment, citing a reason that the petitioner submitted her application seeking compassionate appointment, after long years, submitted another application altering the said request, cannot be accepted.

2.Heard the learned counsel appearing for both sides and perused the materials available on record.

3.Assailing the impugned order, learned counsel appearing for the petitioner submitted that the petitioner's husband S.Gurusamy, while serving as Village Assistant in Singanallu, Perundurai Taluk, Erode District, died on 01.01.2007, leaving behind the petitioner as widow, her daughter Geetha along with her father-in-law as surviving legal heirs. Due to sudden demise of the sole breadwinner in her family, she was unable to tide over the crisis and a timely application was made, seeking compassionate appointment on 05.06.2007. At the time of submitting the said application, the petitioner's age was 47 years, her daughter was a minor aged about 10 years and her father-in-law was also a senior citizen aged about 82 years. Subsequently, her father-in-law also died. The said application was submitted to the first respondent along with the necessary documents, namely, [1]Death Certificate of S.Gurusamy, [2] Legalheirship Certificate issued by the Tahsildar, Perundurai, [3]Nativity Certificate, [4]Community Certificate, [5]Income Certificate, [6]Solvent Certificate issued by the Tahsildar, Perundurai, [7]Certificate [family in poor condition] issued by the Tahsildar, Perundurai. Although the said application was duly acknowledged and received by the first respondent, no action was taken. Meantime, the petitioner become old and reached the age of 56 years. Knowing pretty well that the petitioner had lost her eligibility for compassionate appointment and in view of no action taken by the first respondent for a period of seven long years, she made a fresh application on 08.06.2015, seeking compassionate appointment to her daughter as she had studied till 10th standard and also reached majority. While the petitioner was awaiting favourable orders for compassionate appointment, the first respondent passed the impugned order dated 22.08.2017 rejecting the application made by the petitioner. Hence, the petitioner is before this Court.

4.Learned counsel appearing for the petitioner further submitted that in similar circumstances, the Hon'ble Division Bench of this Court, in an unreported judgment, dated 23.07.2017 passed in W.A.[MD] No.737 of 2013, directed the respondent therein to provide compassionate appointment and brought to the notice of this Court, the relevant portion which is extracted hereunder:

"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 Vasanthakumar, J.] in the following cases :

1.Mohanambal V. Director, Land and Survey Department
[2011 (2) MLJ 47]

2.J.Jeba Mary V. The Chairman, Tamil Nadu
Electricity Board [2011 (3) LLN 405]

3.G.Saravanakumar Vs. The Chairman, Tamil Nadu
Electricity Board, Chennai [2011 (2) CWC 83]

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 three 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."

The above observation made by this Court is squarely applicable to the present case and therefore, he sought for a direction to set aside the impugned order.

5.Learned Special Government Pleader appearing for the respondents submitted that although the petitioner had made an application on 05.06.2007, immediately after the death of her husband on 01.01.2007 seeking compassionate appointment, before taking up the application for various reasons, namely, due to non availability of vacancies, the petitioner made a fresh application on 08.06.2015, seeking compassionate appointment to her daughter, since she became over aged and reached the age of 56 years. As per Rules, the first respondent had rejected the application on the ground that the petitioner cannot alter the request seeking compassionate appointment.

6. When the first respondent had kept the application of the petitioner in a cold storage for more than seven long years, in the mean while, due to failure on the part of the first respondent, the widow has turned over aged, the first respondent cannot put the blame on the petitioner. In any event, the daughter of the petitioner had passed S.S.L.C. and also attained majority on the date of making application, i.e., on 08.06.2015, hence the observation of this Court stated supra will squarely apply to the case of the petitioner. Therefore, the impugned order is set aside and the Writ Petition stands allowed and the first respondent is hereby directed to provide compassionate appointment to the petitioner's daughter commensurating to her educational qualification within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
District Collector's Office,
Erode.

2. The Revenue Divisional Officer,
Erode.

3. The Tahsildar,
Perundurai Taluk,
Erode District.

+1 cc to the Govt Pleader sr 91131
+1 cc to Mr. S. Vijayakumar Advocate sr 90144

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