

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.19759 of 2014

R.Ishwarya

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by the District Collector,
Perambalur,
Perambalur District.

2.The Tahsildar,
Veppanthattai Taluk,
Perambalur District.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent vide his office Proc.No.Na.Ka.A3/8928/2010, dated 01.04.2011 and quash the same and consequently direct the respondents to appoint the petitioner in any of the qualified post under compassionate appointment within an appropriate time.

For Petitioner : Mr.A.Kalaivanan for
M/s.R.Srinivasa Rao

For Respondents : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

Heard Mr.A.Kalaivanan, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader, appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent vide his office Proc.No.Na.Ka.A3/8928/2010, dated 01.04.2011 and quash the same and consequently direct the respondents to appoint

the petitioner in any of the qualified post under compassionate appointment within an appropriate time."

3. The case of the petitioner is as follows:

The petitioner's father was employed as a Village Assistant in the Thevaiyur Village (South) under the control of second respondent. He died suddenly on 01.03.2007, while in service. At the time of death, the petitioner's father was only 42 years old and left behind the petitioner's mother and three daughters including the petitioner, apart from his parents.

4. At the time of her father's death, the petitioner was only 13 years old. According to the petitioner, her father's employment was the only source for their livelihood. After the death of her father, the petitioner's mother had submitted a representation dated 21.09.2009, seeking compassionate appointment for the petitioner. Although she was only 3 years old at that time, the request was also renewed once again in August 2010. It appears that the second respondent had also recommended the claim for compassionate appointment.

5. The petitioner belongs to Hindu Adi-Dravida, which is classified under the Scheduled Caste. In spite of the family which is placed in indigent circumstances at the death of the petitioner's father and the petitioner belonging to Scheduled Caste community, the request of the petitioner was not considered. It appears that even before attaining the age of majority, the first respondent called her to attend the verification process, in order to verify the genuineness of the claim of the petitioner in the year 2010-11, however, eventually the petitioner was not found eligible for any appointment.

6. The said application however was rejected on 01.04.2011, solely on the ground that no application was preferred within three years from the date of death of her father, as her first application had been given only on 23.08.2010, which was after the three years period. The said order has been impugned in the present writ petition. After attaining the age of majority, the petitioner again submitted an application on 23.12.2013.

7. The learned counsel appearing for the petitioner would submit that the rejection order cannot be countenanced both in law and on facts. He would further submit that the petitioner's mother had already submitted an application as early as on 21.09.2009, seeking compassionate appointment for the petitioner. Although the petitioner had not attained the age of majority at

that point of time, after attaining the majority, the petitioner renewed the request. But, however the same came to be rejected on the erroneous decision of fact and law.

8. The learned counsel for the petitioner would draw this Court's attention in the decisions passed by this Court, stating that the period of three years limitation prescribed, cannot be pressed into service, in case of minor eligible children who seeking compassionate appointment. He would rely on the following decisions of this Court in W.P.No.9528 of 2008, dated 19.09.2011. In the said decision, the learned Judge of this Court has updated the various decisions of the Hon'ble Supreme Court as held in the final paragraph, which is extracted below:

"14. In view of the legal propositions laid down in the decisions referred to supra, this Court is of the opinion that the petitioner's claim for compassionate appointment cannot be denied and therefore, the impugned orders dated 08.10.2007 and 09.12.2007, passed by respondents 1 and 2, respectively are set aside. The respondents are directed to consider the claim of the petitioner for compassionate appointment to any suitable post without reference to the objection raised in the impugned orders i.e., the petitioner has not applied within three years from the date of death of her father, but taking into account the fact that the sudden death of her father has left his family in penury and without any means of livelihood, and pass appropriate orders within a period of two months from the date of receipt of a copy of this order."

9. In the case of T.Meer Ismail Ali Vs. The Tamil Nadu Electricity Board, reported in 2004 (3) CTC 120, the relevant paragraph of the said order as extracted below:

"6. I am, therefore, of the view that the petitioner's case deserves consideration in as much as he had diligently made a claim once in the year 1997 and thereafter, immediately after attaining the age of 18, in the year 2000 and in such circumstances, rejection of his application on the ground that it was not made within three years was not justified."

10. In W.P.(MD)No.5879 of 2012, dated 03.06.2014, in this case, the learned Judge adverted to several decisions of this Court and Hon'ble Supreme Court and finally held as follows:

"15. The above Judgments are squarely applicable to the present case. Admittedly in the present case, the application seeking appointment for the petitioner was submitted within three years after attaining majority. Nothing is brought before this Court to show that the family is not in indigent circumstances and this Court is also of the view that when a person cannot be employed in government services before the completion of 18 years, he could not make an application seeking appointment during his period of minority. Therefore as stated above, the period of three years for a minor son/daughter can commence only after he/she attains majority. Therefore, for all the reasons stated above, the application made by the petitioner cannot be treated as time barred. In the result, the impugned proceedings of the respondent dated 08.12.2011, is set aside. The petitioner is directed to produce a certificate from the competent authority to the effect that his family is in indigent circumstance as on today, within four weeks and submit the same before respondents 2 and 3 and on receipt of the same, the second respondent shall pass appropriate orders appointing the petitioner, in any suitable post, within a period of two weeks therefrom."

11. In the case of S.Ramakrishnan Vs. Chief Educational Officer, reported in (2016) 2 MLJ 570, the learned Judge of this Court as held that once an application is made within three years period and there is a change of nomination, subsequently, the same cannot be rejected, solely on the ground that the change of nomination was after three years of period.

12. Upon notice, the learned Special Government Pleader entered appearance on behalf of the respondents and filed a detailed counter affidavit. He strongly contended that the application for seeking compassionate appointment for the petitioner could not be considered, since no application was made, requesting for such appointment within a period of three years, prescribed under the scheme for compassionate appointment. He would also submit that though the petitioner filed in the typed set of papers, an application was said to have been made on 21.09.2009, by the mother of the petitioner, there was no proof filed for having submitted the same to the competent authority.

13. In the said circumstances, he would also submit that the petitioner cannot take advantage of the rulings as extracted above, since in this case, an application was not made factually within three years period, but the claimant had not attained the age of majority and therefore, their claim came to be rejected solely on the ground that no application was made within three years period.

14. This Court having considered the factual and legal submissions of the counsels, is of the view that this Court, time and again has held, three years limitation cannot be applied in respect of minor children who are staking claim for appointment on compassionate ground. In the instant case, admittedly the petitioner was a minor and 13 years old at the time of death of her father and the family was placed indigent circumstances, since her father was a only source of livelihood of the entire family, consisting of mother, three daughters and deceased employee's parents.

15. Even assuming that there was no proof filed in respect of the first representation, said to have been made on 21.09.2009, as per the above quoted decision of this court, that application made after attaining the age of majority cannot be rejected only on the ground of time period limitation. In any event, the counsel for the petitioner vehemently contended that the first representation was indeed made on 21.09.2009 and only thereafter, the petitioner's service under claim was subjected for verification and the claim was also recommended by the first respondent.

16. Therefore, there is valid presumption that a representation which was made within three years period, after the death of the petitioner's father. In view of the facts and circumstances of the case granting the benefit of doubt to the petitioner and also complying the dicta enunciated by this Court in various decisions cited supra, the writ petition is liable to be allowed. In the above circumstances, the impugned order is set aside and the first respondent is directed to consider the claim of the petitioner without insisting on the three years limitation period and the claim may be considered by referring to the indigent circumstances of the family and in respect of the various instructions issued by the Government on the subject matter. The first respondent is

directed to consider the claim of the petitioner more sympathetically and the order to be passed within a period of two months from the date of receipt of a copy of this order. Hence, the writ petition is allowed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

gsk

To

1.The District Collector,
Perambalur,
Perambalur District.

2.The Tahsildar,
Veppanthattai Taluk,
Perambalur District.

+3CC TO Mr.A.Kalaivanan,Advocate sr.59035, 58217

+1cc to Government Pleader sr.58541

W.P.No.19759 of 2014

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ss(18/8/2017)

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