

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.12.2017

CORAM

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

W.P. No.33071 of 2012

and

M.P.No.1 of 2012

M.Abbas

..Petitioner

Vs

1. The Secretary
Department of Forest,
Fort. St. George,
Madras.

2. The District Forest Officer,
Niligiris North Division,
Ootacamund.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records pertaining to order dated 17.08.2012 under the proceedings Na.Ka.No.5178/2012/E2 passed by the second respondent, quash the same, consequently direct the second respondent to consider the petitioner for appointment under compassionate ground in the office of the second respondent based on the representation dated 08.06.2012.

For Petitioner : Mr.C.D.Sugumar

For Respondents : Mr.E.Manoharan
Additional Government Pleader
(Forests)

O R D E R

The order of rejection dated 17.08.2012, issued by the second respondent in respect of the claim of the writ petitioner for compassionate appointment, is under challenge in this writ petition.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner has completed his B.A., Degree and his father was employed in the Forest Department and his services were regularized in the year 1977 and his father was promoted to the post of Forest Guard.

3.The learned counsel for the writ petitioner further states that his father suffered an Acute Cardiac problem and on account of that he was not able to perform his duties and responsibilities in an active manner. Accordingly, an application was submitted for voluntary retirement, on account of medical reasons. The father of the writ petitioner submitted an application for voluntary retirement scheme on 27.12.2002, and in the application itself his father has stated that he is opting for voluntary retirement scheme on account of his illness.

4.However, the respondents have accepted the application as Voluntarily Retired from Service and subsequently, the writ petitioner has submitted an application seeking appointment on compassionate grounds. The said application was considered by the respondents, an order of rejection was passed on 17.08.2012, on the ground that the writ petitioner's father was not relieved from service on the ground of medical invalidation and he was relieved from service based on his application submitted for voluntary retirement. Further, an employee who is opted Voluntarily Retirement Scheme is not entitled for an appointment on compassionate grounds. However, the learned counsel for the petitioner states that even the employees opted for Voluntarily Retirement Scheme is eligible for appointment on compassionate grounds. In this regard, the learned counsel referred a Government letter dated 23.10.1982. The said letter says that the "Government have decided that the benefit of the compassionate appointment envisaged in the G.O.Ms.No.1025, Labor and Employment dated 22.11.1976, should be confined to the cases wherein the Government servants retired on medical grounds, before they attained the age of 50 years, according to the Government directions.

5.However, the Government letter is of no avail to the writ petitioner since the scheme of compassionate appointment is confined only to the cases where an employee was relieved on medical invalidation. For medical invalidation, the procedures are to be followed and a medical report is to be obtained from the Medical Board. However, no such formalities were followed in the case of the father of the writ petitioner. In fact the order of relieving dated 28.03.2003, which is enclosed in the typed set of papers filed along with this writ petition categorically states that the application submitted by the father of the writ petitioner for voluntary retirement had been

accepted and accordingly, he was relieved from service. Thus, it is made clear that the father of the writ petitioner was relieved from service based on the Voluntary Retirement application.

6.Since, it is a case of voluntary retirement as per the scheme of compassionate appointment, the petitioner is not entitled to avail the benefit of the scheme of compassionate appointment, as such the order impugned in this writ petition is in accordance with the terms and conditions of the scheme of compassionate appointment and there is no infirmity.

7.This apart, this Court is of the opinion that even the scheme of the compassionate appointment cannot be extended after a lapse of about 14 years from the date of relieving of the father of the writ petitioner on 28.03.2003. The scheme of the compassionate appointment cannot be construed as a right. Compassionate appointment is a concession and the scheme is an exception. Thus, every appointment on compassionate ground is to be provided, within a reasonable period of three years or atleast five years, now after a lapse of 14 years, even if the petitioner is qualified the same cannot be provided and therefore, on that ground the writ petition deserves no further consideration.

8.Thus, the Writ Petition is devoid of merits and accordingly, stands dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

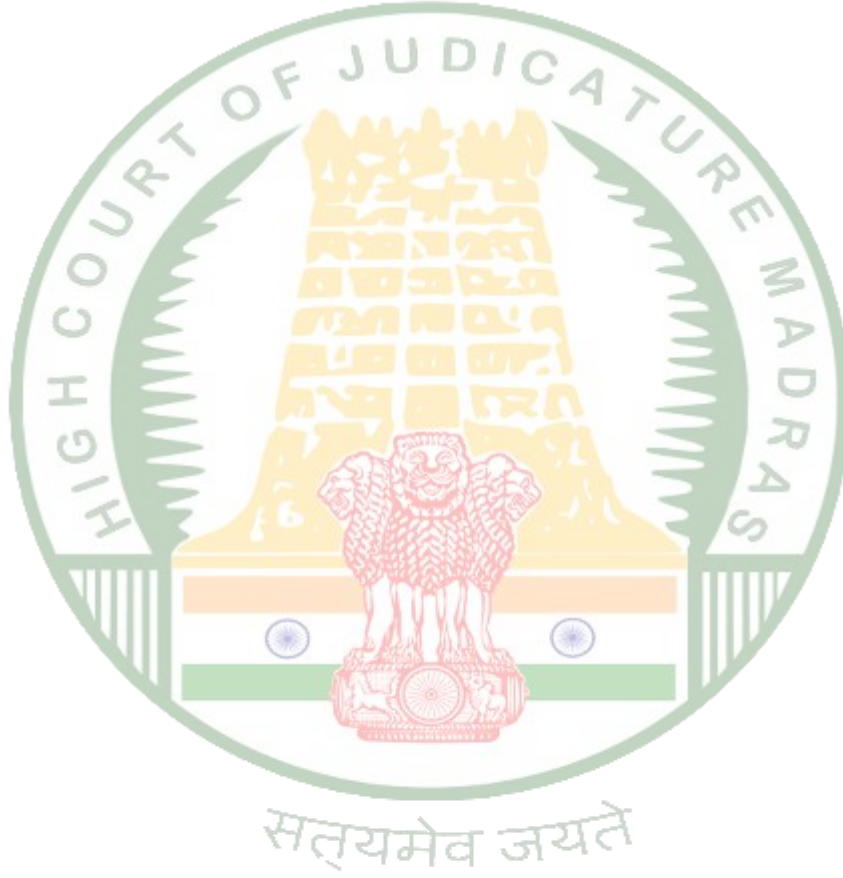
stm/ah
To

1. The Secretary,
Department of Forest,
Fort St. George,
Madras.
2. The District Forest Officer,
Niligiris North Division,
Ootacamund.

+1 CC to Mr.C.D. Sugumar, Advocate sr 91083.
+1 CC to Spl. Govt. Pleader sr 90669.

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SP(18/01/2018)



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