

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 23667 of 2013

J.Shoba

.. Petitioner

Vs.

1. The Additional Director General of Police,
Chief of Prisons, CMDA Tower-2,
No.1, Gandhi Irvin Road,
Egmore, Chennai -8.
2. The Superintendent of Police,
Central Prison,
Thorapadi, Vellore - 632 002.
3. Tmt.Gaja

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned orders passed by the 1st respondent in No.15277/ES 2/2012 dated 23.05.2012 and consequential order in No.8860/P01/2012, dated 09.10.2012, passed by the 2nd respondent and quash the same and direct the respondents to provide suitable employment to the petitioner on compassionate ground without insisting legal heirship certificate and no objection certificate from the 3rd respondent.

For Petitioner : M/s.S.N.Ravichandran
For RR1 & 2 : Mr.S.Diwakar, Spl.G.P.
For RR3 : Mr.M.Rajendiran

O R D E R

The petitioner has filed this Writ Petition praying to call for the entire records connected with the impugned orders passed by the 1st respondent in No.15277/ES 2/2012 dated 23.05.2012 and consequential order in No.8860/P01/2012, dated 09.10.2012, passed by the 2nd respondent and quash the same and direct the respondents to provide suitable employment to the petitioner on compassionate ground without insisting legal heirship certificate and no objection certificate from the 3rd respondent.

2. The brief averments made in the Writ Petition are as follows:

(i) Petitioner's father K.Jayamalar worked as Junior Assistant in the Central Prison at Thorappadi, Vellore. While he was in service, he died due to heart attack on 18.11.1992, leaving his mother Ulaganayagi, his wife Pournami, minors J.Sweety, J.Vinushri, J. Bhavani and the petitioner as his legal heirs. Petitioner's mother made a representation dated 07.12.1992 to the 2nd respondent, requesting for compassionate appointment to her. The 2nd respondent in his reply letter dated 07.10.1993 had directed the petitioner's mother to furnish the necessary documents along with the format, including the legal heirship certificate and no objection certificate from other legal heirs. But due to rival claim by the 3rd respondent / Gaja, the legal heirship certificate was not furnished by the Tashildhar to her mother. The 2nd respondent directed petitioner's mother to obtain succession certificate. Hence, her mother filed a S.O.P.No.16/1993 before the Sub-Court, Vellore. The said Gaja, 3rd respondent herein and her son J.Ravindran filed O.S.No.106/1995, for declaration. By Judgment and decree dated 29.09.1997, the Sub Court, Vellore declared that Gaja and J.Ravindran and petitioner's sisters, petitioner and petitioner's grandmother are entitled to the death benefits due to death of K.Jayamalar, except the petitioner's mother. Aggrieved by the decree passed in O.S.No.106/1995 dated 29.09.2007, petitioner's mother filed an appeal in A.S.No.25/1998 and the same was dismissed by judgment and decree dated 11.11.2002, by the Principal District Judge, Vellore thereby upholding the judgment and decree of the Sub Court, Vellore dated 29.09.1997.

(ii) In the meanwhile, the petitioner's sister made request in 1998, requesting for compassionate appointment to her, however, unfortunately, she died on 31.12.1998. On 10.11.2003, the petitioner made request for compassionate appointment. The 2nd respondent in his letter dated 20.11.2003, directed the petitioner to furnish the necessary documents along with the application in format. The same was submitted to the 2nd respondent, except legal heirship certificate and no objection certificate from 3rd respondent and her son J.Ravindran. On 14.01.2004, the 2nd respondent informed the petitioner that his application for compassionate appointment will be considered in accordance with the seniority. However, there was no response for two years due to ban on appointment in the government. After lifting of ban, petitioner made another request in the first week of March 2006. The same was returned, stating that unless "no objection certificate" from the 3rd respondent and her son is furnished, her application will not be considered. In the meanwhile, the 3rd respondent's son J.Ravindran died on 24.01.2010. Again, the petitioner made a request to the 2nd respondent, which also does not fetch any result.

(iii) Finally, on 27.04.2012, the petitioner made request to the 2nd respondent for compassionate appointment stating that the 3rd respondent could not claim appointment as she has already reached 64 years and her only son J.Ravindaran, who claimed the compassionate appointment also died. The 1st respondent passed impugned order of rejection on 23.05.2012 in No.15277/ES2/2012, rejecting the the petitioner's claim for compassionate appointment on the ground that the petitioner made application after 20 years of death of his father. The petitioner again gave representation to the 2nd respondent to reconsider the said order of the 1st respondent. The 2nd respondent, by consequential impugned order dated 09.10.2012, rejected the petitioner's claim stating that the he has no power to pass order once the 1st respondent rejected the same. Hence, the petitioner has filed this Writ Petition.

3. The learned counsel appearing for the petitioner draw attention of this Court to the following G.Os. and letters and submitted that the impugned order passed by the first respondent is liable to be set aside for the reason that the first respondent has passed the rejection order stating that the petitioner has filed the application seeking compassionate appointment, after a lapse of 20 years from the death of Government Servant and therefore she is not entitled to get the relief:

(i) In G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, wherein in para 2 clause 1 of the said G.O. it is stated as follows

"...1. The application for appointment on compassionate grounds should be made within three years of the death of Government servant"

(ii) The aforesaid Government Order is clarified by the Government in its letter No.39924/a1/95-1, dated 11.10.1995, wherein it has been clarified as follows:

"..... it is clarified that the limit of three years period specified in the Government order first cited is applicable only to the dependants of the Government Servants those who died while in service on or after 26.06.1995 and the above orders are not applicable to the past cases....."

(iii) Again, the said order has been further clarified by Government Order in G.O.Ms.No.149, Home (POL.XV) Department, dated 09.11.1999, where in it has been observed as follows:

"application for appointment on compassionate ground should be made within three years form the date of death of Government servants concerned. However a clarification was issued in Government Letter No.39924/Q1/95-1, Labour and Employment Department, dt.11.10.1995, second read above, that three year rule

would apply to the legal heirs of Government servants who die on or after 26.06.1995 and that it would not apply to past cases."

In paragraph 5 of the said Government order it has been stated as follows:

"The Government have examined the matter carefully and have decided to cancel the orders issued in Government Letter No.101961/Pol.XV/98-6, Home, dt.7.5.1999, insisting only three year rule irrespective of the dates of death of the Government servants. They accordingly direct that the orders issued in Government letter No.101961/Pol.XV/98-6, Home, dated 07.05.1999 be cancelled and that the cases of legal heirs of Government servants whose death occurred prior to 26.06.1995 be considered on their merits. However, in case of deaths occurring on or after 26.06.1995 the three year rule should be strictly followed."

4. According to the learned counsel for the petitioner, as per the aforesaid Government orders, the petitioner's mother made an application in the year 1992 itself. Subsequently, there is a dispute regarding the legal heir of the deceased father. The petitioner's mother is not in a position to submit the particulars as required by the Department. Thereafter, the petitioner made application in the year 2003, i.e., on 10.11.2003. The petitioner alone is eligible for the appointment to the said post. The 3rd respondent is now aged about 64 years. Therefore, the third respondent as well as the petitioner's mother are not eligible for the compassionate appointment. Hence, the petitioner has prayed to consider her application.

5. On the contrary, the learned Special Government Pleader appearing for the respondents 1 & 2, has submitted that the petitioner's mother made application on 07.12.1992 to the second respondent requesting compassionate appointment and she also sent another representation dated 07.10.1993 to the Chief Minister Special Cell with necessary documents. Thereafter, there was a family dispute among the legal heirs of the deceased Jayamalar. Therefore, the said application was not considered due to non furnishing of the particulars as requested by the respondents. In the light of the above, the petitioner made a representation to the 2nd respondent on 10.11.2003. On receipt of the said representation, the Office was directed to verify the documents and whether the applicant is eligible. In the light of the Government Order in G.O.Ms.No.55, Labour and Employment, dated 23.05.2006, without compliance of the said condition, the petitioner's application cannot be considered. However, the impugned order was passed by the first respondent, stating that the said application was submitted in the year 2003, hence, the

said application was rejected by the respondents-Department. By the impugned order, the first respondent has rejected the application on the ground that the application was submitted beyond the period of 3 years, as prescribed in the G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995.

6. The learned counsel for the petitioner has relied upon the decision of this Court reported in 2015 (4) MLJ 479 (SC) in the case of Canara Bank and Another Vs. M.Mahesh Kumar and others, wherein the Supreme Court in para 13, 14 & 19, has held as follows:

".....13. Applying these principles to the case in hand, as discussed earlier, respondent's father died on 10.10.1998 while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme 'Dying in Harness Scheme' dated 08.05.1993 which was in force at that time. The appellant-bank rejected the respondent's claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 07.11.2001, the appellant-bank sought for particulars in connection with the issue of respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No.154/1993 dated 08.05.1993 was in force. Thus, as per the judgment referred in State Bank of India and Others Vs. Jaspal Kaur (supra), the claim cannot be decided as per 2005 Scheme providing for exgratia payment. The Circular dated 14.02.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

14. It is also pertinent to not that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant-bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

.....19. In the result, all the appeals preferred by the appellant-bank are dismissed and the appellant bank is directed to consider the case of the respondents for compassionate appointment as per the Scheme which was in vogue at the time of death of the concerned employee. In the facts and circumstances of

the case, we make no order as to costs. Appeal dismissed."

7. Therefore, it is rightly pointed out by the learned counsel for the petitioner that G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995 is prospective and not retrospective. However, the Government also clarified by letter dated 11.10.1995, that the said period of 3 years is not applicable to the case, where Government servants died before 26.06.1995. The said Government order G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995 will not apply to the facts of the case, in view of the Government letter as well as the decision cited supra. On this ground, the impugned order passed by the first respondent is liable to be quashed. The petitioner has made out a case. The petitioner succeeds and the Writ Petition is liable to be allowed.

8. The Writ Petition is allowed and the impugned order passed by the first respondent is quashed and the matter is remitted back to the first respondent to re-consider the claim of the petitioner in accordance with law. The first respondent shall complete the exercise of passing of the orders on merits and in accordance with law, within a period of four months, from the date of receipt of a copy of this order, after providing opportunities to the parties. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Additional Director General of Police,
Chief of Prisons, CMDA Tower-2,
No.1, Gandhi Irvin Road,
Egmore, Chennai -8.

2. The Superintendent of Police,
Central Prison,
Thorapadi, Vellore - 632 002.

+1 cc to Govt.Pleader,sr.9040

+1 cc to mr.M.Rajendiran, advocate,sr.8981.

vsn(co)

krd 7/4

W.P. No. 23667 of 2013