

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.37802 of 2016

1 Sathish.R .. Petitioner

Vs.

1 The Chief Secretary to Government
Secretariat
Fort st. George
Chennai-600 009

2 The Secretary to Government
Rural Development and Panchayat Raj Department
Secretariat
Fort St. George
Chennai-600 009.

3 The Director of Rural Development and Panchayat Raj
Panagal Maligai
No.1, Jeenis Road
Saidapet
Chennai-600 015.

4 The Director of Employment and Training
Alandur Salai
Thiru.Vi.Ka. Industrial Estate
Guindy
Chennai-600 032

5 The District Collector
Thiruvannamalai District
Thiruvannamalai

.. Respondents

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the 5th respondent vide his proceedings in Letter No. Na.Ka. 65/2008/ Pa.A4 dated 03.01.2008 and quash the same as illegal and consequently direct the respondents to pass appropriate order appointing the petitioner in any suitable post within

stipulated time

For Petitioner	..	Mr.S.Anbuselvam
For Respondents	..	Mr.K.Dhananjayam, Special Government Pleader

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner would state that his father, namely Ramachandran was working as a Road Worker (Salai Paniyalar) in Kalasapakkam Panchayat Union of Tiruvannamalai District. He died on 28.11.1981 leaving behind his mother Tmt.Unnamalai, his sister Tmt.Jothi, his brother Thiru Anbalagan as well as him as his legal heirs. The petitioner, on completion of the age of 18, had submitted a representation/application dated 11.8.1997 to the 5th respondent on a grievance day, praying for appointment on compassionate ground. The petitioner would further state that as instructed by the 5th respondent, he has also submitted his original Certificates for scrutiny on 21.9.1998 and the Certificates were also verified and the said official passed positive recommendation dated 4.10.2001 to the 3rd respondent to provide employment to the petitioner on compassionate ground owing to the indigent circumstances. However, the 5th respondent vide his communication dated 3.1.2008 has rejected the application on the ground that the petitioner has failed to apply within three years from the date of demise of his father and challenging the legality of the same, he has come forward to file this writ petition.

3. The learned counsel for the petitioner would submit that in the light of the positive recommendation made to the third respondent by the 5th respondent vide letter dated 4.10.2001, there is no impediment on the part of the 3rd respondent to pass an order, considering the request made by the petitioner seeking appointment on compassionate grounds. The learned counsel would further contend that the petitioner continues to be in indigent circumstances and therefore, sympathetic consideration may be shown for quashing the impugned order with a further direction, directing the respondents to provide appointment to the petitioner on compassionate ground.

4. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader, who appears for the respondents 1 to 5 would contend that admittedly, the father of the petitioner died on 28.11.1981. It is the petitioner's claim that he was aged about 3 years and he would attain the age of majority during the year 1996 and further submitted that the application seeking

appointment on compassionate ground was made to the 5th respondent on a grievance day only on 11.8.1997 and fails to explain the delay in filing the application. It is the further submission of the learned Special Government Pleader that though the 5th respondent has rejected his application vide communication dated 3.1.2008, the writ petition came to be filed only after 8 years from the date of rejection and on that ground also, the writ petition is liable to be dismissed.

5. This Court considered the rival submissions and also perused the materials placed before it.

6. The Labour and Employment Department has passed a G.O. (Ms.) No.155 dated 16.7.1993, providing guidelines, for giving appointment on compassionate ground. It is relevant to extract the Order, which reads as follows:

LABOUR AND EMPLOYMENT DEPARTMENT
G.O. (Ms) NO.155 DATED 16.7.1993.

Read:

1. G.O. (Ms.) No.225, Labour and Employment dated 15.2.1972
2. G.O. (Ms.) No.560, Labour and Employment dated 3.8.1977
3. G.O. (Ms.) No.998, Labour and Employment dated 2.5.1981
4. Govt. Lr.No.18274/N1/82-3 Labour and Employment dated 9.7.1982
5. G.O. (Ms.) No.73, Employment Service dated 26.10.1983
6. G.O. (Ms.) No.8, Employment Service dated 7.1.1987
7. G.O. (Ms.) No.567, Labour and Employment dated 11.4.1990

Read also:

8. G.O. (Ms.) No.23, Labour and Employment dated 10.2.1993

ORDER:

One of the conditions prescribed under the scheme of appointment on compassionate grounds formulated in the G.O. First read above is that the family of the deceased Government servant should be in "indigent circumstances". Another condition introduced in the G.O. third read above is that if there is already any earning member in the family of the Government servant who died in harness, the other dependants of the deceased Government servant will not be eligible for compassionate appointment.

2. The Government have re-examined the above mentioned conditions. The expression "indigent circumstances" has not been precisely defined. It has been left mostly to the subjective satisfaction of the appointing authorities. Therefore, the Service Associations have represented that this condition be deleted. The family of a deceased Government Servant is entitled to Provident Fund, accumulations, Family Benefit, Death cum Retirement Gratuity, Encashment of leave at credit at the time of death, etc. The Government consider that those amounts or the interest earnings that will accrue on

depositing these amount: need not be taken into consideration. It is therefore necessary to ascertain whether the family is having immovable property like houses, lands etc., the income from which is substantial to sustain the family without any extra help. The Government therefore direct that the criteria for indigent circumstances is that the family should not own any house or landed properties or if owned, the income from which is insufficient to sustain the family. A certificate from the Tahsildar to this effect will have to be produced.

3. In regard to the second condition mentioned in para 1 above, it is considered that if a member of the family is already on employment and supports the family then the restriction may be applied. When a dependent of the family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family. If that person was employed even before the death of the Government Servant and was living separately without extending any help to the family, then the case of other eligible dependents will be considered.

4. However, the restriction that only one of the dependents will be entitled for appointment on compassionate grounds will continue.

5. Only the dependents of the deceased Government Servant, viz., wife/husband/son, unmarried daughter will be eligible for appointment. If the widow is not educationally qualified/eligible for appointment, she could be given a job like sweeper. The Government also direct that a married daughter who is deserted by her husband and living with the family of the deceased Government Servant and widowed or divorced daughter living with the family may be considered, if the widow of the deceased Government Servant gives her consent in writing.

6. Age restrictions of 30 in the case of sons/unmarried daughters or 40 in the case of widow/widower will continue.

7. All cases requiring relaxation will be decided by the Committee constituted with reference to para 20 of the Chief Minister's standing Order No.2, Personnel and Administrative Reforms dated 9.1.92.

8. These orders will be applicable to families of Government Servants who have retired on medical invalidation before attaining the age of 50 years.

BY ORDER OF THE GOVERNOR

R. VARADHARAJULU

Secretary to Government.

7. It is a well settled position of law that appointment on compassionate ground is not a regular source of recruitment and the petitioner claiming appointment on compassionate ground has no vested right for claiming the said relief.

8. The Hon'ble Supreme Court, vide its decision reported in 2013 (1) Scale 506, (The Chief Commissioner, Central Excise and Customs, Lucknow and others vs. Prabhat Singh), has considered the issue relating to delay in raising the claim and also the norms laid down for making compassionate appointments and held that appointment on compassionate ground is permissible within three years from the date of demise of bread winner in harness and if there is any delay in raising the claim, the respondent therein is not entitled to claim appointment on compassionate ground, as a matter of right. In the opinion of this Court, such judgment squarely applies to the facts of this case.

9. A Division Bench of this Court in the decision reported in 2016 (5) CTC 125 (The Inspector General of Prisons, Tiruchirapalli District v. P.Marimuthu) has considered the issue relating to minor son of deceased Government servant submitting an application after attaining the age of majority and after taking into consideration the various judgments rendered by the Hon'ble Supreme Court as well as this Court held as follows:

"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 1989 (4) SCC 468."

10. Admittedly, the petitioner has belatedly submitted an application seeking appointment on compassionate ground, after 16 years from the date of demise of his father on 28.11.1981, after attaining the majority in 1996. Though the impugned order came to be passed as early as on 3.1.2008, he made a challenge to the said order by filing the writ petition only on 24.10.2016 and all along he is surviving and therefore, the said background has also an indication that the petitioner is not in indigent circumstances. The petitioner is also guilty of delay and laches and as such coupled with the ratio laid down in the judgment rendered in 2016 (5) CTC 125 cited supra, the petitioner is not entitled to any relief.

11. In the result, the writ petition is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

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To

- 1 The Chief Secretary to Government
Secretariat
Fort st. George
Chennai-600 009
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Rural Development and Panchayat Raj Department
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- 3 The Director of Rural Development and Panchayat Raj
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- 4 The Director of Employment and Training
Alandur Salai
Thiru.Vi.Ka. Industrial Estate
Guindy
Chennai-600 032
- 5 The District Collector
Thiruvannamalai District
Thiruvannamalai

+1cc to Mr.C.S. Loganathan, Advocate, S.R.No.591

+1cc to the Government Pleader, S.R.No.225

nmi (CO)

md(31/01/2017)

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