

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.42050 of 2016 &
W.M.P.No.35976 of 2016

Salsabeel

... Petitioner

Vs.

1. The Chief Engineer (Work establishment)
TANGED Co.,
Chennai - 600 002.

2. Chairman Cum Managing Directorate
TNED (Lmt).,
800, Anna Salai
Chennai - 600 002.

3. The Superintending of Engineer
Udumalaipet Distribution Circle
TANGED, Udumalaipet.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Order No.40223/870/NIA/N1.Section.1/U-1/KO.VA.VE/2015 dated 05.01.2016 and Order No.12908/224/NIA/N1.Section.1/U-1/KO.VA.VE/2016 dated 05.05.2016 issued by the 3rd respondent, quash the same and consequently direct the respondents to consider the application of the petitioner for compassionate appointment.

For Petitioner : Ms.S.Meenakshi

For Respondents : Mr.P.R.Dhilip Kumar

WEB COPY
O R D E R

The orders of rejection of the application for compassionate appointment were issued to the writ petitioner in proceeding Nos.40223/870/NIA/N1.Section.1/U-1/KO.VA.VE/2015 dated 05.01.2016 and 12908/224/NIA/N1.Section.1/U-1/KO.VA.VE/2016 dated 05.05.2016 on the ground that the application was not submitted within a period of three years from the date of death of the deceased employee.

2. The learned counsel appearing for the writ petitioner states that the father of the writ petitioner was employed as Commercial Assistant and died on 20.05.2004, while he was in service. The learned counsel further submits that at the time of death of the deceased employee, the writ petitioner was minor, aged about six years and unable to submit his application seeking compassionate appointment. Thus, the application was made on 08.12.2015 and considering the circumstances the respondents issued the impugned orders in proceedings dated 05.01.2016 and 05.05.2016, stating that the application was not submitted within three years from the date of death of the deceased employee.

3. However, this Court has to consider the scope of the scheme of compassionate appointment and the manner in which the same to be provided to the legal heirs of the deceased employee.

4. The Hon'ble Division Bench of this Court in the case of The Inspector General of Prisons vs. P.Marimuthu {2016 (5) CTC 125}, in paragraphs 36 to 41, held as follows:

36. In National Institute of Technology v. Niraj Kumar Singh reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was

issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

"21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LRs. And Ors., (2005) 12 SCC 1]"

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* reported in 1989 (4) SCC 468.

41. In the result, the Writ Appeal is allowed. No costs. Order made in W.P(MD) No.6538 of 2009 dated 22.04.2014 is set aside. Consequently, connected Miscellaneous Petition is closed."

5. In view of the settled legal principles by the Hon'ble Division Bench of this Court, the claim of the writ petitioner at this length of time more specifically after a lapse of 13 years years cannot be considered and the very ground of indigent circumstances vanished by efflux of time. The indigent

circumstance of a family of the deceased employee cannot be a ground to provide compassionate appointment. The very object and purpose is to mitigate the circumstances arising immediately on account of the demise of the Government employee. Thus, the continuous indigent circumstances are at the instance of the family members and the legal presumption is that the circumstances aroused at the time of the death of the Government employee vanished after a lapse of many years. In this view of the matter no further adjudication is required to be undertaken on the ground raised in this writ petition.

6. Accordingly writ petition is dismissed. However no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

jer

To

1. The Chief Engineer (Work establishment)
TANGED Co.,
Chennai - 600 002.
2. Chairman Cum Managing Directorate
TNED (Lmt).,
800, Anna Salai
Chennai - 600 002.
3. The Superintending of Engineer
Udumalaipet Distribution Circle
TANGED, Udumalaipet.

+1cc to Ms.S.Meenakshi, Advocate in sr.no.63176

MG(CO)
NR 05/10/2017

W.P.No.42050 of 2016 &
W.M.P.No.35976 of 2016

WEB COPY