



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2017

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CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM  
AND  
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

W.A.(MD)No.974 of 2015  
against WP(MD)No.3302 of 2012  
and  
M.P.(MD).No.1 of 2015

The Commissioner,  
Nagercoil Municipality,  
Nagercoil,  
Kanyakumari District.

... Appellant/Respondent No.2

**Vs .**

1. T.Mugesh

... Respondent/Petitioner

2. The Director,  
Directorate of Local and  
Municipal Administration,  
Chepauk, Chennai.

... Respondent/1<sup>st</sup> Respondent

**PRAYER:** Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 09.12.2014 passed by this Court in W.P.(MD).No.3302 of 2012.

Prayer in WP(MD). 3302/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the order dated 04.10.2010 made in NA.KA.No.H1/12891/2006 issued by the second respondent and quash the same and consequently direct the respondents to consider the petitioner for appointment in the suitable post in the second respondent Municipality on Compassionate Grounds.

For Appellant : Mr.P.Athimoolapandian

<https://hcservices.ecourts.gov.in/hcservices/>

For R1 : Mr.W.Pamelin for Mr.S.Murugaian

For R2 : Mr.R.Anand Raj, Government Advocate

**COMMON JUDGMENT**

[Judgment of the Court was delivered by T.S.SIVAGNANAM,J.]

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The appellant is the Commissioner of Nagercoil Municipality and being aggrieved by the order passed in W.P.(MD).No.3302 of 2012, dated 09.12.2014, he is before this Court. The said writ petition was filed by the first respondent challenging the order dated 04.10.2010, rejecting his application for grant of appointment on compassionate ground.

2. The petitioner's father was initially appointed during the year 1991, for the purpose of spraying mosquito repellent in the Nagercoil Municipal area. Thereafter, the petitioner's father was posted as a sanitary worker and thereafter promoted as sanitary supervisor and while he was functioning in the said post, he died in harness on 20.03.2002. There were four legal-heirs which includes the petitioner, his mother, his sister and grand mother. The mother was aged about 35 years and illiterate lady and both the petitioner and his sister were minors aged about 11 and 13 respectively. Even when the petitioner was a minor, he made an application to the respondent Municipality for grant of appointment on compassionate ground by application dated 27.02.2007. This application was not considered by the appellant Municipality nor any orders were passed thereon. Subsequently, he gave another application on 15.04.2010, after attaining majority and after he completed his 10<sup>th</sup> standard. The said application has been rejected by an order dated 04.10.2010, stating that the application is filed belatedly ie., 5 years after the demise of his father, the employee of the appellant Municipality. When the matter came up before the learned Single Judge, taking into consideration of the factual matrix and that the time limit of three years for submitting an application from the date of demise of the employee was issued only on 08.10.2007 ie., after the demise of the petitioner's father, the Writ Court took into consideration the indigent, circumstances of the petitioner's family exercised discretion and allowed the writ petition and directed the writ petitioner to be given an appointment to a suitable post having regard to his educational qualification.

3. The learned counsel for the appellant would contend that time and again, the Honourable Supreme Court has held that compassionate appointment cannot be granted after long delay and the delay in attaining majority cannot be a ground to grant compassionate appointment after attaining majority. In support of such contention, the learned counsel for the appellant relied on

<https://hcservices.courts.gov.in/hcservices/>

(i) in ***E.Ramasamy v. Tamil Nadu Electricity Board &***



*others* reported in 2007 W.L.R.796,

(ii) in *Local Administration Department and Another v. M.Selvanayagam @ Kumaravelu* reported in 2011 (4) L.W. 530 (SC) and

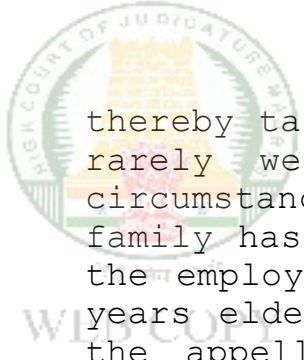
(iii) in *Sanjay Kumar v. State of Bihar* reported in 2000 (7) SCC 192.

On the above grounds, it is submitted that the impugned order has to be set aside.

4. The learned counsel for the respondent/writ petitioner submitted that recently, the Division Bench of this Court, in the case of *S.Velraj vs. The Superintendent Engineer, Tamil Nadu Electricity Board, Tirunelveli and another*, dated 16.12.2015, held that there cannot be a strait jacket formula with regard to the three years limitation period. The learned counsel for the respondent/writ petitioner referred to the decisions in *R.Sridevi v. Secretary to Government* reported in (2012) 2 MLJ 211, W.P.(MD). No.1099 of 2016 dated 20.01.2016, W.P.(MD).No.22983 of 2016 and W.P.No.14758 of 2010.

5. We have heard the learned counsel for the parties and carefully perused the materials placed for reference.

6. It is not in dispute that there are several decisions passed by this Court as well as the Honourable Supreme Court, considering the aspect as to the right of a legal-heir of an deceased employee to seek appointment on compassionate ground. The Government Order which stipulates a three years period admittedly was issued on 08.10.2007, after the demise of the petitioner's father. However, it appears that the said Government Order was given retrospective effect. The purpose of granting appointment on compassionate ground is to tide over the financial crisis. It is not a vested right, but right granted by a statute or a scheme framed by the employer. Admittedly, the appellant has a scheme for appointment on compassionate ground. Therefore, the only issue which is put against the petitioner is the delay. Even when the petitioner was a minor, he had submitted the first application on 27.02.2007. However, the respondent did not take any action nor returned the application. Once again, on attaining majority, when he had given an application, both the applications came to be rejected. In the case of *S.Velraj vs. The Superintendent Engineer, Tamil Nadu Electricity Board, Tirunelveli and another*, dated 16.12.2015, the Division Bench held that the three years limitation cannot be applied in strait-jacket formula and each and every case has to be approached differently based on the facts. The petitioner's father was a sanitary worker and died in harness. Though at the time of demise, he was working as a sanitary supervisor, he joined the services to the appellant Municipality as a person spraying mosquito repellent in the Municipal area,



thereby taking care of the health of the people in the area. Very rarely we get candidate for such a post. In the current circumstances and it is not the case of the appellant that the family has sufficient financial support from others. The widow of the employee is an illiterate lady, the petitioner sister is two years elder to him. Thus, considering all these aspects and that the appellant rejected the application only after about three years, we find that the order passed by the learned Single Judge is just and proper, considering the facts and circumstances of the case. Thus, the present case being a peculiar case calls for a peculiar remedy and accordingly, we are not inclined to interfere with the order passed by the learned Single Judge. For the above reasons alone, the Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

**To**

1. The Director,  
Directorate of Local and  
Municipal Administration,  
Chepauk, Chennai.
2. The Commissioner,  
Nagercoil Municipality,  
Nagercoil,  
Kanyakumari District.

+ 1 CC TO Mr.P.ATHIMOOLAPANDIAN, ADVOCATE IN SR No. 51832  
+ 1 CC TO Mr.MURUGAIYAN, ADVOCATE IN SR No. 54039

AKV  
TE/MR : 19/05/2017 : 4P/5C

W.A. (MD) No.974 of 2015  
against WP (MD) No.3302 of 2012  
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