

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on: 16.06.2017
Delivered on: 22.06.2017

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CORAM**THE HONOURABLE MR. JUSTICE S.S. SUNDAR****W.P. (MD) .No.22001 of 2015**

M.Priyadharshini

..Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary,
Department of Home,
Fort St. George, Chennai - 9.

2. The Director General of Police,
Kamaraj Salai,
Mylapore, Chennai - 4.

3. The Commissioner of Police,
Trichy City, Trichy.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pursuant to the impugned order passed by the third respondent vide proceedings Na.Ka.No.A3/17208/2013, dated 29.07.2013 and quash the same as illegal and consequently, direct the third respondent to provide compassionate appointment to the petitioner in any of the available post in the third respondent department as suitable as per the qualification of the petitioner.

For Petitioner : Mr.D.Selvaraj

For Respondents : Mr.J.Gunaseelan Muthaiah,
Government Advocate.

O R D E R

This Writ petition is filed challenging the order of the third respondent, in Na.Ka.No.A3/17208/2013, dated 29.07.2013, rejecting the petitioner's request for appointment on compassionate ground and further to direct the third respondent to provide compassionate appointment to the petitioner in any suitable post.

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

2. Heard the learned counsel appearing for the petitioner and



the learned Government Advocate appearing for the respondents.

3. The brief facts that are necessary for the purpose of disposal of the Writ petition are as follows:-

The petitioner is the daughter of Late.Sri.Mathivanan. The petitioner's father, Late.Sri.Mathivanan served as Head Constable (H.C.No.1459) in the third respondent Department. While he was in service, he died on 29.01.2006, leaving behind the petitioner, her mother and younger sister along with the parents of the petitioner's father. The petitioner's mother filed an application on 25.05.2006, seeking appointment on compassionate ground, at that time, the petitioner was thirteen years old. Though the third respondent recommended the second respondent to provide appointment to the petitioner's mother on compassionate ground, the petitioner's mother was not appointed and her application was kept pending. However, the petitioner's mother submitted an application on 01.06.2012, stating that her daughter may be provided compassionate appointment, as she had passed 53 years. The said application was rejected by the third respondent on the ground that the application filed by the petitioner on 01.06.2012, requesting the respondents to give compassionate appointment to the petitioner, is beyond three years from the date of death of the petitioner's father and that therefore, the application cannot be considered.

4. The learned counsel for the petitioner submitted that the impugned order has been passed by the third respondent on an erroneous understanding of the object with which the Government provide employment to the dependants of the deceased Government servant who die while in service. The third respondent failed to apply his mind, as regards the position that no one in the petitioner's family is employed and that the application which was never considered and disposed of, cannot be a reason to reject the later application which was filed in the year 2012. The application filed in the year 2012 should be taken as an application in continuation of the application which was filed within the time in the year 2006. However, the learned Government Advocate appearing for the respondents submitted that the impugned order passed by the third respondent is perfectly valid, as the application filed by the petitioner in the year 2012 is beyond the period of three years prescribed.

5. In this case, it is not in dispute that the petitioner's father died while he was in service, on 29.01.2006. The petitioner is a dependant and that she was a minor at that time is also not disputed. The application submitted by the petitioner's mother in the year 2006 is within the time. The fact that the petitioner's mother was not provided appointment on compassionate ground based on her application in the year 2006 is admitted. The fact that the petitioner and her mother filed the application on



01.06.2012, requesting the third respondent to provide appointment to the petitioner on compassionate ground is also admitted.

6. In such circumstances, this Court is of the view that the case on hand falls within the factual matrix of the case decided by a learned Single Judge of this Court in **G.Saravanakumar Vs. The Chairman, Tamil Nadu Electricity Board, reported in 2011 (2) CWC 83**. In a similar case, this Court has held that the fact that the petitioner has not filed an application seeking appointment within three years from the date of death of his father and that he has not completed 18 years of age within three years, are not valid ground to delay the appointment on compassionate ground. Paragraph Nos.7 to 9 of the Judgment is extracted below for convenience:-

"7. The facts which are not in dispute are that the petitioner's father was employed in the Tamil Nadu Electricity Board and he died on 12.09.2006 while he was in service. The same is evident from the Legal Heirship Certificate issued by the Tahsildar, Gangavalli, dated 10.11.2006 and from the Consolidated Certificate issued by the very same authority on 10.06.2010. The Application submitted by the petitioner's mother and widow of the deceased TNEB employee on 08.12.2008 seeking compassionate appointment for her is not in dispute. On 11.02.2010 the third respondent directed the petitioner's mother to submit the application for compassionate appointment along with Death Certificate, Legal Heirship Certificate and Consent letter from other legal heirs. The fact that the petitioner has also submitted the application for compassionate appointment along with all the required documents on 21.01.2011 is also not in dispute. But, however the petitioner was not provided with any employment in the respondent-Board.

8.(a) Similar issue as to whether an application seeking compassionate appointment can be rejected on the ground that the application was not submitted within three years from the date of death of the deceased employee and whether completion of 18 years within three years, is a mandatory requirement when earlier application submitted by other claimant is kept pending, was considered by this Court in the decision reported in **T.Meer Ismail Ali V. The Tamil Nadu Electricity**



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Board, 2004 (3) CTC 120, (F.M.Ibrahim Kalifullah, J. (as he then was)]. In the said case the deceased Board employee died on 13.04.1993 and the application submitted by one of his daughter on 5.8.1997 was rejected on the ground that she had not completed 18 years of age and after completing 18 years of age when an application was made on 4.7.2000 which was rejected on the ground that the application was not made within three years from the date when the Board proceedings, dated 13.10.1995 was issued. This Court considering the technical plea raised by the respondent-Board set aside the said order remitted the matter to pass fresh orders without reference to the objections already raised by the Board. The said order of the learned single Judge was challenged by the TNEB in W.A.No.4008 of 2004 before the First Bench of this Court (consisting of the Hon'ble Mr. Justice Markandey Katju, C.J. (as he then was) and N.V.Balasubramanian, J.) dismissed the Writ Appeal on 1.12.2004. The respondents herein filed SLP No.6387 of 2005 against the said order which was also dismissed on 1.4.2005 by the Honourable Supreme Court and consequently the said Writ petitioner was given compassionate appointment.

(b) Another Writ petition in W.P.No.41459 of 2005 was considered by me on the same set of facts. The said Writ petition was allowed following the earlier order of the Division Bench of this Court made in W.A.No.4008 of 2004, dated 1.12.2004 and the said decision is reported in **Selvi.R.Anbarasi V. Chief Engineer (Personnel), TNEB, Chennai**, 2006 (2) MLJ 200. The said order was challenged by the TNEB before the First Bench in W.A.No.988 of 2006. However, the said petitioner was given appointment on compassionate ground by implementing the order and therefore, the Writ Appeal was dismissed as infructuous on 15.09.2006 by recording the statement made by the Standing Counsel for the TNEB.

(c) In W.P.No.21512 of 2003 one Indiraniammal challenged the rejection of compassionate appointment on similar ground. The learned Single Judge dismissed the Writ petition by order dated 4.8.2003 against which the petitioner therein filed W.A.No.3050 of



2003 and the said Writ Appeal was allowed by the Division Bench (consisting of the Hon'ble Mr. Justice P. Sathasivam (as he then was) & S.K. Krishnan, J.) by order dated 8.3.2005 following the earlier Judgments as well as the Supreme Court Judgment reported in **Balbir Kaur V. Steel Authority of India Ltd.**, 2000 (6) SCC 493. Against the said decision Civil Appeal No.2039 of 2006 was filed by the respondent-Board herein which was dismissed by the Honourable Supreme Court on 30.03.2010.

(d) Dismissal of another W.P.No.775 of 2004 by order dated 29.01.2005 on the ground of delay was considered by the Division Bench (F.M. Ibrahim Kalifullah, J. (as he then was) & P. Murugesan, J.) in W.A. (MD) No.29 of 2006 and by order dated 27.06.2006 the Division Bench allowed the Writ Appeal and directed to give compassionate appointment to the younger son of the deceased Board employee, who died on 15.11.1996. The said order of the Division Bench was also challenged by the Board in S.L.P. (C) No.15534 of 2007 which was also dismissed by the Apex Court on 8.4.2009.

(e) Three Writ petitions were disposed of by me I.e., W.P.Nos.19914 of 2004, 32409 of 2004 and 10577 of 2005 by common order, dated 24.07.2006 wherein similar issue was considered. In respect of the above three Writ petitions, which were allowed, Writ Appeal was filed against one Writ petition in W.A.No.1206 of 2006 while implementing the order in respect of other two cases. The said Writ Appeal was allowed by the Division Bench on 29.09.2006. The respondent in the Writ Appeal viz., J. Karthick filed review application which was also rejected by the Division Bench on 25.08.2008. Against the dismissal of the Writ Appeal as well as rejection of Review Application, the said J. Karthick filed S.L.P. (C) No.2004-2005/2009 and on 23.02.2009 the SLPs were tagged along with Civil Appeal No.2039 of 2006 viz., Indiraniammal case. Subsequently, the said SLP was numbered as Civil Case Nos.5068-5069 of 2009 which was allowed on 30.03.2010 and the said order reads as follows:-

"Leave granted.

<https://hcservices.ecourts.gov.in/hcservices/> Heard learned counsel for the parties.

These Appeals have been filed against the



impugned Judgment of the High Court of Madras, dated 29th September, 2006 and subsequent order dated 25.08.2008 passed in the Review Application.

The Division Bench of the High Court has reversed the Judgment of the learned Single Judge only on the ground of delay who directed compassionate appointment to the appellant. The appellant was a minor at the time of the death of his father and since the mother of the appellant applied within time, we are of the opinion that the appellant after becoming major should have been granted compassionate appointment.

Accordingly, we allow these appeals, set aside the impugned Judgment of the Division Bench and restore the Judgment of the learned Single Judge. No costs.'

(Emphasis Supplied)

From the perusal of the above order, it is evident that the order passed by the Division Bench in Writ Appeal and in the Review petition were set aside and the order of the Single Judge, dated 29.09.2006 was restored.

(f) In W.P.No.18575 of 2006, I had an occasion to consider similar issue and allowed the Writ petition on 20.06.2006 by following earlier orders. The said order was also challenged by the respondent in W.A.No.42 of 2007 and the Division Bench (D.Murugesan, J. & K. Venkataraman, J.) dismissed the Writ Appeal on 2.7.2009. The Board filed S.L.P.(C) No.8305 of 2010 which was also dismissed by the Honourable Supreme Court on 6.7.2010. The said candidate viz., P.Venkatesan was given compassionate appointment by order dated 18.08.2010.

(g) Again similar matter was considered by me in W.P.No.29059 of 2003 and relief granted by order dated 7.7.2006, against which also the Board filed W.A.No.1652 of 2006. The said Writ Appeal was dismissed by Division Bench (D.Murugesan, J. & S.Nagamuthu, J.) on 30.03.2009.

(h) W.P.(MD)No.1335 of 2006 was disposed of by me on 10.08.2006. The said order was also confirmed by the Division Bench (consisting of the Hon'ble Mr. Justice



P.D.Dinakaran (as he then was) & P.R.Shivakumar,J.) in W.A.No.309 of 2007 on 8.8.2007 and the same is reported in **Superintending Engineer, Madurai Electricity Distribution Circle V. V.Jaya**, 2007 (6) MLJ 2011, and the said candidate viz., V.Jaya was given appointment order.

(I) Similar matter was against considered by me in W.P.No.4050 of 2006 and the said Writ petition was allowed by order dated 29.06.2010 following the orders of the Division Bench and Supreme Court and the said Judgment is reported in **M.Uma V. Chief Engineer (Personnel), TNEB, Chennai**, 2010(7) MLJ 644. No appeal is filed against the said order.

9. From the above referred decisions passed by this Court in series of cases on the same ground, it is evident that the similar grounds raised by the respondents that the petitioner has not filed application seeking compassionate appointment within three years from the date of death of his father and that he has not completed 18 years of age within three years are not valid grounds to deny appointment on compassionate grounds."

7. This Court is in full agreement with the view expressed by this Court in the Judgment reported in **2011 (2) CWC 83**. Hence, following the same, the Writ petition is allowed and the impugned order passed by the third respondent, in Na.Ka.No.A3/17208/2013, dated 29.07.2013, is quashed. The third respondent is directed to consider the petitioner's application, dated 01.06.2012, as an application filed in time and to dispose of the same on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To

1. The State of Tamilnadu,
Rep. by its Secretary,
Department of Home,
Fort St. George, Chennai - 9.



2. The Director General of Police,
Kamaraj Salai,
Mylapore, Chennai - 4.

3. The Commissioner of Police,
Trichy City, Trichy.

+1 cc to Mr.D.Selvaraj , Advocate in SR.No. 60697

pmu

AE/JC/SAR1/03.07.2017/8P/5C

PRE-DELIVERY ORDER MADE IN
W.P. (MD) .No.22001 of 2015
22 .06.2017