

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Orders Reserved on :16.06.2017****Orders pronounced on :28.06.2017****Coram:****THE HONOURABLE MR.JUSTICE S.S.SUNDAR****W.P. (MD)No.8873 of 2015**

C.Lakshmanan

...Petitioner

-Vs-

1.The Commissioner of Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.

2.The General Manager,
Madurai District Co-operative Milk
Producer's Union,
Madurai-20.

...Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records pertaining to the order, dated 12.12.2014 made in Ref.No.2300/Pers.2/2006 on the file of the General Manager, Madurai District Co-operative Milk Producer's Union, Madurai - 20, the second respondent herein and quash the same and consequently direct the second respondent to place petitioner in appropriate position in the seniority list of candidates eligible for appointment on compassionate grounds in any suitable post commensurate with the qualifications.

For Petitioner : Mr.A.Sivasubramanian
For R2 : Mr.M.Murugan
Government Advocate

ORDER

This writ petition is filed for issuance of a writ of certiorarified mandamus to quash the impugned order of the second respondent, dated 12.12.2014 and consequently to direct the second respondent to place the petitioner in appropriate position in the seniority list of candidates eligible for appointment on compassionate grounds in any suitable post commensurate with the qualification of the petitioner.

2.The brief facts that are necessary for the disposal of the above writ petition are as follows:-

The petitioner's father Late.M.Chinnathambi joined the services of the second respondent Union on 05.02.1979 as Security Guard. After completing more than 10 years of service, the petitioner's father died in harness on 02.10.1990. The petitioner's father died leaving behind petitioner, his mother, his two sisters and his grandmother. It is stated by the petitioner that after the death of petitioner's father, his family was in duress and was in huge financial crisis. Soon after the petitioner attained the age of



18, the petitioner's mother submitted the application seeking appointment of petitioner on compassionate ground. The said application was dated 25.10.1995.

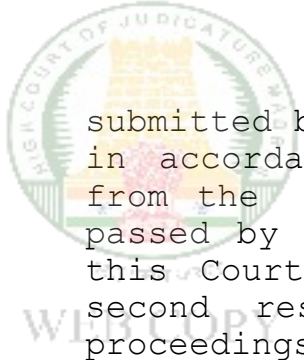
3. It is the case of petitioner that though the application for appointment on compassionate ground should be filed within a period of three years, the said limitation was prescribed only by G.O.Ms.No.120, Labour and Employment, dated 26.06.1995 and that the said Government Order can be applied only to the case of the employees, who died in service on or after 26.09.1995.

4. The petitioner further states that his mother sent further representations, dated 17.01.1998 and 27.01.1998. It is admitted that on 25.09.2000 the second respondent informed that the application filed by the petitioner's mother was beyond the period of limitation fixed by G.O.Ms.No.120. However, the petitioner submits that the second respondent thereafter, by communication, dated 03.04.2002 informed the petitioner that his application would be considered on the basis of the clarification issued to the effect that the three years period of limitation is not applicable to the cases where the Government employee died earlier to the Government Order stated supra. Further, the petitioner relied upon the communication received from the respondents to the effect that the petitioner's application seeking appointment on compassionate ground could not be processed because of the ban on recruitment.

5. There was a subsequent communication, dated 08.01.2003 by which, the second respondent informed the petitioner that his application was kept under waiting list along with others and that it would be considered after getting orders from the Government. The petitioner's case is that the Government lifted the ban imposed on fresh appointments by order, dated 07.02.2006 and the Government also clarified that the three years limitation for making application is only applicable to cases where the death of the employee was after 26.06.1995.

6. The petitioner has been making several representations and it is to be noted that the respondents have not rejected the request of the petitioner. However no inference can be drawn that there was a promise at any point of time to provide employment to the petitioner on compassionate ground.

7. Later, in response to an application under the Right to Information Act, the petitioner was informed that the application filed by the petitioner on 25.10.1995 seeking employment to the petitioner on compassionate ground was rejected, as it was not filed within three years from the date of death of petitioner's father. Even thereafter, the petitioner has made several representations and ultimately he filed a writ petition in W.P.(MD).No.6946 of 2014, suppressing the crucial facts. On the basis that, the application filed on 26.02.2014 was not yet disposed of, this Court, directed the second respondent to consider and dispose of the application



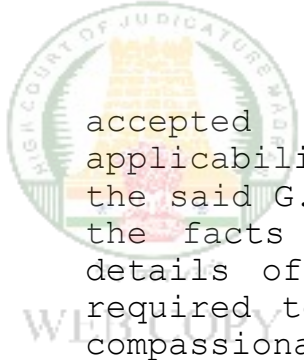
submitted by the petitioner for appointment on compassionate grounds in accordance with the relevant regulations, within three months from the date of receipt of copy of the order. This order was passed by this Court on 22.08.2014. Pursuant to the direction of this Court, the petitioner was called upon to appear before the second respondent and the second respondent by the impugned proceedings, dated 12.12.2014 rejected the representation, dated 18.11.2014 given by the petitioner mainly on the ground that the application, which was filed by the petitioner's mother was belated and that the request of the petitioner to appoint him on compassionate ground cannot be considered. This order has been challenged before this Court by the petitioner.

8.The learned counsel for the petitioner strenuously argued that the application filed by the petitioner's mother in the year 2006 was well within the period of 3 years from the G.O., whereby the period of limitation was prescribed for the first time. It was also submitted that the said G.O., is not applicable to the cases where the employee died prior to the G.O., and that the Government has also clarified the position while considering similar cases, subsequently.

9.The learned counsel for the petitioner also submitted that the application was not processed due to the general ban on recruitment between 2001-2006. After keeping the application pending for a long time as if, it was under process, the second respondent has not applied his mind as regards the applicability of the Government Order which was issued in the year 1995, prescribing the period of limitation as three years. The specific case of the petitioner is that the respondent could have passed the order and disposed of the petitioner's representation long back, if the reason stated in the impugned order was really the only possible decision, which is in strict interpretation of the rule and the Government Orders. Having accepted the position that the G.O., prescribing the period of limitation cannot be applied in the case of employees, who died prior to 1995 as reflected from the various communications received from the second respondent, it is not open to the second respondent to reject the petitioner's application for appointment on compassionate ground merely by citing the period of limitation.

10.Assuming that the Government Order namely G.O.Ms.No.120, Labour and Employment, dated 26.06.1995 is applicable even in respect of cases where the employee died prior to 1995, the application seeking petitioner's appointment on compassionate ground being filed within three years from the date of G.O., cannot be thrown out on the ground of delay.

11.The second respondent has filed a detailed counter. The second respondent admitted in the counter affidavit regarding the factual details relating to the date of death of petitioner's father and the various applications and representations filed/submitted by the petitioner between 2006-2014. The second respondent also



accepted the interpretation of the petitioner as to the applicability of G.O.Ms.No.120, dated 26.06.1995, by stating that the said G.O is not applicable to the past cases. After referring to the facts relating to the general ban on recruitment and other details of the qualification of the petitioner and the documents required to be submitted by the persons, who seek appointment on compassionate ground, the respondent contended that the period of limitation cannot be extended for an infinite period. In the whole of the counter affidavit, it is seen that the main point on which, the respondent object to the appointment of petitioner is that the appointment on compassionate ground cannot be claimed as a matter of right and that the dependants of employees, who died in harness, do not have any special privilege or right to employment, except as provided under the Rules framed to cover such issues. Learned Government Advocate reiterated the same points. The submission of the learned counsel for the respondent on the general proposition of law, is not appealing to the Court. The question in this case is whether the application submitted by the petitioner is within time and whether the petitioner is entitled to appointment in any suitable post on compassionate ground as per the rules.

12.On the first issue, the facts are not disputed in this case. The petitioner's father died of-course on 02.10.1990. However, it is admitted that the petitioner's mother filed an application on 25.10.1995 seeking appointment to the petitioner on compassionate ground. On the date of application, the petitioner's status that he was a major and qualified for being considered for appointment are also not in dispute. Though, the application was returned originally by relying upon the Government Order prescribing the period of limitation, later, it was clarified and admitted by the respondent that the applicability of the Government Order has been clarified by the Government in favour of the petitioner and that the application filed in the present case is well within the time. Even, assuming that the Government Order is applicable, the fact that the period of limitation is introduced by the Government for the first time only by the said G.O., any application which is filed within three years from the date of G.O. cannot be rejected on the ground of delay or limitation. Hence, this Court is of the firm view that the application dated 25.10.1995, was well within the time and that the petitioner's case can be considered for being appointed on compassionate ground, if he satisfy the other norms and rules as framed by the Government. Though the application was earlier, returned in the year 2000 by the second respondent, the second respondent has altered his position immediately on his own by relying upon the clarification to the effect that G.O.Ms.No120, dated 26.09.1995, cannot be pressed into service to reject any application on the ground of limitation, in respect of a case where the Government employee died prior to the Government Order.

13.Having taken this particular stand from the year 2002, this Court is surprised to find that the consideration of the petitioner's application was unnecessarily delayed for about 12



years. The petitioner with all his sincerity has repeatedly making representations one after another and maintained that his family is still in financial crisis to show that he is a deserving dependant, who satisfy all the norms to provide appointment on compassionate ground. However, the rejection of the petitioner's representation by the impugned order, dated 12.12.2014 is contrary to the stand taken by the second respondent all along on the interpretation and the applicability of the Government Order earlier.

14. In such circumstances, this Court has no other option but to hold that the application filed by the petitioner's mother in the year 1995 is well within the time and that the impugned order passed by the second respondent, dated 12.12.2014, is un-sustainable in law.

15. The next question is whether the petitioner is entitled for appointment on compassionate ground having regard to the long delay. As regards the petitioner's eligibility in terms of the regulations, there is no whisper in the counter affidavit pointing out any violation of rules or norms in case, the petitioner's application in the year 1995 is held to be in time. The impugned order does not refer to any disqualification with reference to any rules or norms or guidelines regarding appointment on compassionate ground. When the application is filed in time and the petitioner is prosecuting the same with due diligence all these years, the petitioner's case regarding difficult circumstances, in his family cannot be ignored. This Court is inclined to allow the writ petition and accordingly, the writ petition stands allowed. The impugned order passed by the second respondent, dated 12.12.2014 in Ref.No.2300/Pers.2/2006 is quashed. The second respondent is directed to consider the petitioner's application for appointment on compassionate ground afresh purely on merits and in accordance with law and provide him suitable employment based on his qualification, if he is found eligible, in accordance with the concerned rules, within a period of 8 weeks from the date of receipt of copy of this order.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Milk Production and Dairy Development
Madhavaram Milk Colony, Chennai - 600 051.
2. The General Manager
Madurai District Co-operative Milk Producer's Union, Madurai- 20.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.62689

+1cc to Mr.A.SIVA SUBRAMANIAN Advocate in SR. No.62329

DAS/AM

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W.P. (MD) No.8873 of 2015

28.06.2017