



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

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THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P. (MD) No.2036 of 2011

and

M.P. (MD) No.1 of 2011

T.Lakshmi Ganapathi

...Petitioner

Vs.

1. The District Collector,
Tuticorin,
Tuticorin District.

2. The Tashildar,
Srivaikundam,
Tuticorin,
Tuticorin District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating the impugned order passed by the first respondent in his proceedings in Na.Ka.No. 44/43808/2010 dated 11.01.2011 and quash the same and further direct the first respondent to issue appointment order to the petitioner on compassionate ground for the post of Office Assistant.

For Petitioner : Mr. K.Prabhu

For Respondents : Mr.V.Muruganantham

Additional Government Pleader

O R D E R

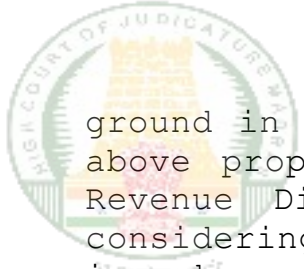
This Writ petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus to call for the records relating the impugned order passed by the first respondent in his proceeding in Na.Ka.No. 44/43808/2010 dated 11.01.2011 and to quash the same and further direct the first respondent to issue appointment order to the petitioner on compassionate ground for the post of Office Assistant.



2.The learned counsel for the petitioner would submit that the petitioner's father one Thayumanasamy worked as a record clerk in Tashildar office at Srivaikundam. He died on 17.04.2006, at that time the petitioner was minor and his mother submitted a representation dated 25.07.2006 to the second respondent to appoint her son as an Office Assistant on compassionate ground and the same was rejected by the second respondent on the ground that the petitioner was a minor and the minor cannot be appointed in any job. The second respondent by his proceedings in Na.Ka.No. 4/60298/2006 dated 04.01.2008 directed the mother of the petitioner to submit the relevant certificates for the said appointment, but the respondents have not sent any reply to that. Hence, on 12.02.2010 the second respondent had directed the petitioner's mother and the petitioner to file an affidavit and appear before the office. He submitted all the papers before the second respondent regarding appointment on compassionate ground. The first respondent by his proceedings in Na.Ka.No. 4/60298/2006 dated 26.04.2010 has rejected his application on the ground that he is not attained the age of majority. Aggrieved by the same, he submitted a representation to the first respondent on 05.07.2010 and also submitted a representation to the Chief Minister Special Cell to appoint him on compassionate ground for the said post and on that representation the petitioner did not get any reply. Hence, the present writ petition has been filed.

3.The learned counsel for the petitioner would submit that at the time of his father death the petitioner was minor. After attaining the age of majority immediately he submitted a representation before the first respondent to consider his case and the same was rejected by the first respondent by relying upon the Government Letter (Ms) No.42 Labour and Employment (Q1) Department, dated 12.03.2017, that the legal heir of the deceased Government Servant should have completed 18 years and the application for appointing the legal heir on compassionate ground should have been filed within 3 years from the date of the death of the said Government Servant. Hence, as per the said Government Letter the petitioner is not entitled for any appointment as he has not attained the age of majority.

4.It seen from the records that even though the respondents have filed a counter admitting the fact that the petitioner was working under them and the mother requested an employment to her son on 25.07.2006, it was also registered in Sl.No.44. As per Government Order 135, the application was sent to the Tahsildar, Srivaikuntam who enquired into the petition and requested the mother to submit a relevant documents viz., death certificate, legal heir certificate, integrated certificate for taking further service on regular basis. The Tahsildar in A6/6976/2006 dated 11.11.2006. The Tahsildar sent the proposal through Revenue Divisional Officer, Thoothukudi to give appointment under compassionate



ground in his Lr.No.A6/6975/2006 dated 11.03.2009 and in turn the above proposal was recommended to the District Collector by the Revenue Divisional Officer, Thoothukudi on 09.07.2009. After considering the records the request of the writ petitioner is kept in abeyance for reaching the seniority to post him under compassionate ground.

5.The Government by Order 42, Labour and Employment (Q1) Department dated 12.03.2007 have instructed to follow the conditions laid down by the Hon'ble Supreme Court regarding appointment on compassionate ground. As per the Government Lr.No.2563, Labour and Employment Department dated 11.03.1982, the age of the legal heir of the deceased Government Employee will be considered at the time of death of Government Employee for appointment under compassionate ground.

6.The Hon'ble Supreme Court in Special Leave Petition No.12876 of 2000 has ordered that it is not necessary to keep a post vacant in the case of minor legal heir of deceased Government servant until he attain the age of majority under compassionate ground appointment. Since the petitioner was only 16 years old at the time of his father's demise, as per the instructions laid down in the Said Government Order and also based on the Hon'ble Supreme Court judgment that the legal heir of the deceased Government Employee should have attained 18 years of age at the time of the death of Government servant for appointment under compassionate ground he is not eligible for the same and his request was rejected.

7.Again the writ petitioner sent a petition to the District Collector on 05.07.2010 requesting for the same. In the Government Letter (Ms) No.86/A.1/2010-2, Labour and Employment (Q.1) Department dated 04.05.2010, it has been clearly instructed that the legal heir of Government Employee who died before 23.08.2005 only are eligible for appointment under compassionate ground and the writ petitioner's father expired on 17.04.2006 and hence, this Government Order is not applicable in the writ petition and it was rejected on the ground that at the time of his father's death he was only 16 years old and hence he is not eligible for the same.

8.On perusal of the records it seen that at the time of the writ petitioner's father death he was only 16 years old. After he attained the age of majority on 18.01.2008 immediately he has communicated the first respondent / The District Collector, Tuticori, Tuticorin District, through a representation dated 21.06.2008 and the same was rejected by the first respondent by his impugned order. Since the petitioner has applied within 3 years from the date of attaining the age of majority, this Court is of the view that the case of the petitioner can be considered as this petitioner has been repeatedly pleading for considering



his appointment on compassionate ground. Hence, this Court directs the first respondent / The District Collector, Tuticorin, Tuticorin District to consider his case on sympathetic ground, if he is otherwise eligible and the same can be considered as per the existing rules and in accordance with law and pass necessary orders within a period of three months from the date of receipt of a copy of this order.

9.The writ petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Tuticorin,
Tuticorin District.

2. The Tashildar,
Srivaikundam,
Tuticorin,
Tuticorin District.

+1cc to Mr.K.Prabhu, Advocate Sr.No.92514
+1cc to Spl.Government Pleader Sr.No.92638

MM

VB/KK/SAR3/08/01/2018/4P/5C

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