



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

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W.P. (MD) No. 20079 of 2013

M. Sivasubramanian

... Petitioner

Vs.

The District Collector,
Ramanathapuram District,
Ramanathapuram.

... Respondent

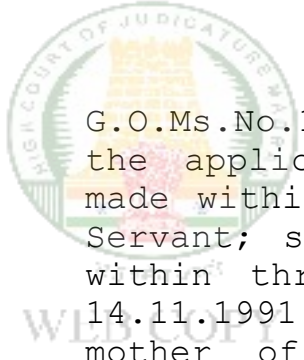
PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order No.O.Mu. (Aa3) 19954/2013 dated 20.03.2013 passed by the respondent and to quash the same as illegal and consequentially direct the respondent to consider the petitioner for appointment in any suitable post on compassionate grounds.

For Petitioner : Mr. M. E. Ilango

For Respondent : Mr. V. Muruganantham
Additional Government Pleader**ORDER**

The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order No.O.Mu. (Aa3) 19954/2013 dated 20.03.2013, passed by the respondent and quash the same and consequentially direct the respondent to consider the petitioner for appointment in any of the suitable post on compassionate grounds.

2. The petitioner's father while working as Village Administrative Officer under the respondent, died in harness leaving behind his widow i.e., the mother of the petitioner, who was pregnant at that time and only thereafter the petitioner born on 02.02.1992. Therefore, at the time of death of his father, the petitioner not even seen his world. Thereafter, the petitioner attained majority on 02.02.2010. Thereafter, on 13.10.2012, the petitioner's mother had submitted an application to the respondent seeking appointment to the petitioner on compassionate ground. Since the same was not considered, again she made a request on 18.03.2013. The said request of the petitioner's mother had been rejected by the impugned order of the respondent on 20.03.2013, wherein the respondent has stated that as per



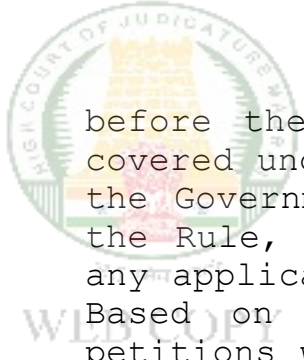
G.O.Ms.No.120 Labour and Employment Department, dated 26.06.1995, the application for compassionate appointment should have been made within three years from the date of death of the Government Servant; since in this case, admittedly, no application was made within three years period as the petitioner's father died on 14.11.1991 and the application was given only on 18.03.2013 by the mother of the petitioner and therefore, the same has been rejected. Challenging the same, the petitioner has come out with this writ petition.

3. Heard both sides.

4. The learned counsel appearing for the petitioner would contend that the petitioner at the time of death of his father was not at all born. He born on 02.02.1992 and attained majority on 02.02.2010 only. Thereafter, the petitioner's mother made an application on 13.10.2012 within three years from the date on which the petitioner attained majority. Since the same was not considered, the petitioner made a representation on 05.09.2013. Before that her mother had given an other application at the Public Grievance Reddresal Day on 18.03.2013 to the respondent. Only by giving the response to the said application dated 18.03.2013 given by the mother of the petitioner, the present impugned order has been passed, wherein the respondent has stated that since the application has been made beyond the three years period stipulated in G.O.Ms.No.120 Labour and Employment Department dated 26.06.1995, the said request for appointment on compassionate ground to the petitioner cannot be accepted.

5. The learned counsel appearing for the petitioner would further submit that the petitioner's mother being the widow is getting only Family Pension of Rs.5,590/- per month. Apart from the said pension, no other source of income is available for their livelihood. Therefore, the family is in indigent circumstance and the said circumstance is continuing even today. Therefore, the case of the petitioner should have been considered favourably and compassionate appointment should have been provided to the petitioner in commensurate with his qualification. The rejection order made by the respondent, therefore is totally erroneous and hence, the same has to be set aside, he contended.

6. Per contra, the learned Additional Government Pleader appearing for the respondent would contend that the Government passed G.O.Ms.No.120 Labour and Employment Department dated 26.06.1995, wherein three years rule was imposed, that means within three years from the date of death of the Government Servant his/her legal heir should have made application for compassionate appointment. Beyond three years period, the application cannot be entertained. Subsequently, the said G.O. was clarified by the Government Letter dated 11.10.1995. According to the clarification, those who died

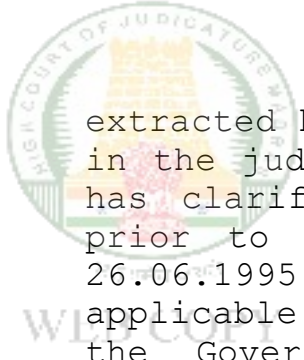


before the date of the said G.O. i.e. 26.06.1995, would not be covered under the three years Rule. That means, the legal heirs of the Government Servant who died prior to 26.06.1995, unmindful of the Rule, can make application even beyond 3 years period and if any application is submitted that application will be entertained. Based on the subsequent Government letter, a number of writ petitions were allowed by this Court at various points of time and one such order passed by this Court was in W.P.No.7565 of 2011 dated 09.08.2011. However, the learned Additional Government Pleader would contend that the learned Judge who passed the said order in W.P.No.7565 of 2011 has subsequently given a modified view in another order passed in W.P.No.21279 of 2013 dated 02.08.2013.

7.The learned Additional Government Pleader has also produced a copy of the said order made in W.P.(MD) No.21279 of 2013, in the matter of A.Vetrikumari v. Government of Tamilnadu rep. by Secretary to Government, Health and Family Welfare Department and another. In view of the said judgment made by this Court, the three year Rule period prescribed under G.O.Ms.No.120 Labour and Employment Department dated 26.06.1995, shall be applicable both for the past cases as well as future cases. That means those Government Servant died prior to 26.06.1995 and after that the three years Rule will apply to all the cases. Therefore, certainly the application now made cannot be entertained as admittedly such application has been made beyond 3 years period. Therefore, by heavily relying on the said decision of this Court made in W.P.No.21279 of 2013, the learned Additional Government Pleader submitted that the impugned order requires no interference as the same has been passed fully in accordance with law.

8.This Court considered the rival submissions made by the respective learned counsel.

9.No doubt the Government has issued G.O.Ms.No.120 Labour and Employment Department dated 26.06.1995, wherein three years period was prescribed, but subsequently by letter dated 11.10.1995, the position was clarified, whereby the 3 years Rule applicable to those who made application on behalf of the deceased Government Servants who died prior to 26.06.1995 alone could be considered. In case the Government Servant died after 26.06.1995 and based on which the compassionate appointment is sought for by filing application by legal heirs, certainly such application should have been made within three years period. This clarification had been given by the subsequent Government letter. By virtue of that, those Government Servants who died prior to 26.06.1995, the 3 years period Rule would not be made applicable. Here in this case, the petitioner's father died on 14.11.1991, <https://hccservices.courts.gov.in/cse06es/> 1995. Therefore, the three year Rule will not be applicable. However, by subsequent Government letter dated 08.10.2007, further clarification has been issued, which has been



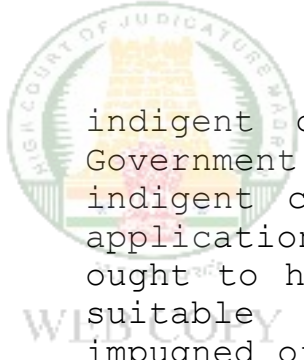
extracted by the Learned Judge in the order dated 02.08.2013, made in the judgment cited supra. In the subsequent letter, Government has clarified that whether the death of Government Servant was prior to G.O.Ms.No.120 Labour and Employment Department, i.e., 26.06.1995 or after, in all cases the 3 year Rule would be made applicable. Considering the said clarification letter issued by the Government, the learned Judge dismissed the said writ petition.

10.However, the learned Judge at paragraph 14 of the said order has stated as follows:

"14. In the case on hand, the death of the Government servant took place on 16.09.1988. The application was made after 13 years. No reasons were given as to why there was a delay of 13 years in making the application. Representation dated 17.06.2011 was made after 10 years of making the application, that is after 23 years after the death of the Government servant and the same was rejected by the impugned order dated 29.09.2011."

Reasons for dismissal of the writ petition has been stated in the said order, especially at paragraph No.14 that in that case the legal heir of the Government Servant though attained majority has not at all sought compassionate appointment for 13 years and thereafter an application was given after 23 years of the death of the Government servant. There is no reason given by the legal heir of the Government Servant in that case for making such belated application with such huge delay in making such application, in spite of the fact that the legal heir of the deceased Government Servant had very well attained majority and would have been eligible to seek compassionate appointment. Only in that context, the learned Judge rejected that case of the petitioner therein as no reason was given for belated applications. Here, in this case facts are entirely different as admittedly the petitioner's father had died on 14.11.1991. The petitioner born after his death. Therefore, he would have attained majority only on 02.02.2010. Therefore, only thereafter, the petitioner himself was eligible to seek appointment on compassionate ground. Therefore, he has rightly made application on 13.10.2012, i.e. within 3 years from the date of attaining majority. Therefore, in the considered opinion of this Court, the application made is within three years period. Therefore, the same should have been entertained.

11.Moreover, as per the certificate issued by the revenue department, the petitioner's mother is getting Family Pension of Rs.5,590/- per month. Apart from such pension no other income is available for the petitioner's family. This shows that the petitioner's family in order to tide over the situation now facing, is seeking compassionate appointment. Even though making of compassionate appointment is in violations of service rules and norms of the Government service, the same still is being in existence because to tide over the penurious situation and



indigent circumstances, because of the untimely death of the Government Servants. Here in this case, petitioner's family is in indigent circumstances and in penurious situation and since the application has been made within three years period, the same ought to have been entertained and decided by giving appointment, suitable to the petitioner's qualification. Therefore, the impugned order is liable to be quashed and accordingly is quashed.

12.Resultantly, the writ Petition is allowed and there shall be a direction to the respondent to consider the request of the petitioner seeking compassionate appointment and pass orders appointing him in a suitable post on compassionate ground, depending on the eligibility, the petitioner is holding. Needful as directed above shall be done within two months from the date of receipt of a copy of this order. No costs.

Sd/
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

The District Collector,
Ramanathapuram District,
Ramanathapuram.

+1cc to Special Government Pleader in SR.No. 1512

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