



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT
DATED : 04.04.2017

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THE HON'BLE MR. JUSTICE **M.V.MURALIDARAN**

W.P. (MD) No.4328 of 2013

A.Baby

.. Petitioner

Vs.

1. The District Collector
Madurai District
Madurai.

2. The Divisional Engineer (NH)
Divisional Engineer Office
Madurai.

.. Respondents

Petitioner under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned orders passed by the second respondent in his proceedings Ku.No.2010/05/A2, dated 26.09.2005 and Me.Ku.No.1121/2007/A2, dated 07.07.2009, to quash the same and to consequently direct the second respondent to appoint the petitioner's son, A.Balaji, to any suitable post in the second respondent Department on compassionate grounds.

For Petitioner : Mr.K.Seemaraj

For Respondents : Mr.K.Guru

Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned orders passed by the second respondent in his proceedings Ku.No.2010/05/A2, dated 26.09.2005 and Me.Ku.No.1121/2007/A2, dated 07.07.2009, to quash the same and to consequently direct the second respondent to appoint the petitioner's son, A.Balaji, to any suitable post in the second respondent Department on compassionate grounds.

2. The facts in brief are as under: The petitioner's husband, who was appointed as Watchman in the first respondent's office on 09.07.1972, rendered unblemished service and died on 02.03.1991, despite best treatment given to him.

<https://hcservices.ecourts.gov.in/hcservices/> stated that the her husband's income is the lone source of income to the family and she has three sons. The petitioner sent a representation to the first second respondent



expressing her inability to work in the second respondent, while seeking appointment to her sons on attaining majority. The petitioner claims to be living in indigent circumstances.

4. It is averred that the petitioner's first two sons studied only up to 8th Standard due to indigent circumstances and her third son studied up to XII Standard. After her third son attained majority, the petitioner sent representation on 13.09.2005 seeking appointment on compassionate grounds. She also enclosed no objection certificate from the other sons.

5. It is stated that the second respondent, by proceedings dated 26.09.2005, rejected her request on the ground that no petition was sent within three years from the date of death of her husband. Thereafter, the petitioner sent another representation to the Chief Engineer and Superintending Engineer seeking appointment to her third son on compassionate grounds. However, the second respondent, by proceedings dated 07.07.2009, rejected the request on the ground that the application was filed belatedly.

6. Hence, the present writ petition for the relief stated supra.

7. I heard Mr.K.Seemaraj, learned counsel for the petitioner and Mr.K.Guru, learned Government Advocate for the respondents.

8. It is the contention of the learned counsel for the petitioner that the petitioner's son ought to have been appointed in any suitable post in the second respondent department on compassionate grounds and there is no specific provision which prescribes cut off date to the application either prior or after certain date.

9. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that compassionate appointment cannot be sought as a matter of right and that inasmuch as the petitioner has not sent a petitioner seeking appointment on compassionate grounds within three years of the death of the government servant, the representation of the petitioner was rightly rejected by the second respondent and the proceedings do not warrant interference of this Court.

10. A perusal of G.O.Ms.No.155, Labour and Employment Department dated 16.07.1993 reveals that the Government thought it fit to grant appointment to a member of the family of a Government servant, who died in harness.

11. In paragraph (7) of the government order, it is stated that the cases requiring relaxation will be considered by the Government constituted with reference to para 20 of the Chief Minister's Standing Order No.2, Personnel and administrative Reforms dated 09.01.1992.



12. In the light of the above said government order, the claim of the petitioner merits consideration by the Government. The contention of the respondents that the widow had not applied within three years and, therefore, the application of the petitioner, who is the son, cannot be considered at a belated stage, goes against the tenor of the Government order, which was issued as a welfare measure for the family members of the deceased Government servants.

13. Concededly, the petitioner's children were minors at the time of the death of his father, a Government servant. In my view, the stand of the respondents that the petitioner has not applied for compassionate appointment within three years does not stare at the face of the petitioner.

14. In a case, where an application seeking appointment on compassionate grounds was made after 17 years of death of the government servant, a learned Single Judge of this Court in B.Arun Kumar v. Secretary to the Government of Tamil Nadu, (2011) 8 MLJ 457, held as under:

"10. I do not find any infirmity in appointing the petitioner on compassionate ground, when the application was made after 17 years from the death of the father of the petitioner, who was a Government Servant. Admittedly, the father of the petitioner died on 14.06.1979 and the mother of the petitioner made an application on 13.08.1996. At the time of death of his father, the petitioner was aged about 7 years. In view of the existing scheme providing compassionate appointment, the mother of the petitioner sought compassionate appointment to the petitioner and the same was also provided. Without taking into account the letter dated 11.10.1995, Labour and Employment Department, as well as the letter of the first respondent dated 14.11.1995, the impugned order was passed. Hence, I am of the view that the impugned order is liable to be quashed.

11. As rightly pointed out by the learned counsel for the petitioner, the Division Bench of this Court in the order dated 03.11.2009 made in W.A.No.1559 of 2009 (V.Balakrishnan vs. 1. The Joint Director of Agriculture, Tiruvannamalai and others), considering the decision of the Supreme Court in Union of India vs. K.P.Tiwari reported in (2003) 9 SCC 129 and D.M.Premkuari vs. The Divisional Commissioner, Mysore Division reported in 2009 (2) Supreme 271, has held in para 6 as follows:



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of the learned Government Pleader. Compassionate appointment is not meant for persons who do not in fact face the difficulty. It is meant to tide over the immediate difficulty of the family. For a moment, we do not approve the manner in which he has obtained the employment. At the same time, it is also to be seen that in the instant case nearly after four years, the State Government has moved to cancel the appointment. Nothing is placed on record as to what action was taken against the officers, who are responsible for the disputed appointment and delayed action on the part of the Government. Almost similar facts were there in the two matters which have been referred herein in the sense that the persons were sought to be removed after passing of good number of years. Besides, by now, nearly 15 years have gone since the time the appellant has been initially appointed, and, therefore, we do not think that it will be fair to disturb his employment.'

12. In my view, the aforesaid decision of the Division Bench of this Court squarely applies to this case also. In the result, the impugned order is quashed and the writ petition is allowed. No costs."

15. Moreover, having regard to paragraph 7 of the Government Order, which states relaxation can be given on a decision by the Committee constituted as per the Chief Minister's Standing Order No.2, Personnel and Administrative Reforms, dated 09.01.1992, this Court is of the firm view that the order passed by the respondent authorities cannot be countenanced.

16. In the result:

(a) the writ petition is allowed and the order passed by the second respondent in his proceedings Ku.No.2010/05/A2, dated 26.09.2005 and Me.Ku.No.1121/2007/A2, dated 07.07.2009 are set aside;

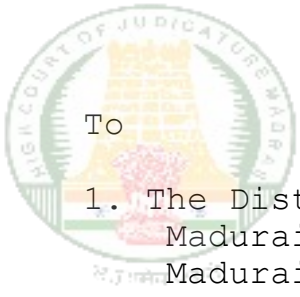
(b) the respondents are directed to appoint the petitioner's son, A.Balaji, in any suitable post on compassionate grounds;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CO)

/True copy/



To

1. The District Collector,
Madurai District,
Madurai.

2. The Divisional Engineer (NH),
Divisional Engineer Office,
Madurai.

+1cc to Mr.K.Seemaraj, Advocate, SR.No.50001.

+1cc to Special Government Pleader, SR.No.19395.

order made in
W.P.(MD) No.4328 of 2013
04.04.2017

VS

RAM/SV MMS/SAR 4/11.05.2018/5P/5C