

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

W.P.No.19659 of 2004

K.Salammal

...Petitioner

-Vs-

1. The Chief Engineer,
Highways Department,
Chepauk,
Chennai- 600 005.

2. The Divisional Engineer (H),
National Highways formerly known as
Tribal Area Development Works,
Subramanியan Nagar,
Salem-5.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the proceedings of the 1st respondent made in letter No. NI 7(1)/04434/03 dated 09.06.2003 and quash the same and consequently, direct the respondents to provide job to the petitioner's daughter viz. Jabamalar on compassionate grounds and pass such further or other orders.

For Petitioner : Mr.A.Jenasenan

For Respondents: Mr.K.Ravi kumar
Additional Government Pleader
for R1 and R2

ORDER

The prayer sought for in this writ petition is for a writ of Certiorarified mandamus to call for the proceedings of the 1st respondent made in letter No.NI 7(1)/o4434/03, dated 09.06.2003 and quash the same and consequently, direct the respondents to provide job to the petitioner's daughter viz. Jabamalar on compassionate ground.

2. The petitioner's husband, who was working as last grade servant at the respondents department, died on 10.05.1986 in hospital. Due to the sudden death, the petitioner, who is the widow of the deceased Government employee along with her daughter was suffering a lot. Therefore, immediately, the petitioner made an application to the respondent department, to seek compassionate appointment.

3. Though the said application of the petitioner was considered at that time by the respondent, the same could not be materialised because, admittedly, the petitioner did not have any educational qualification to hold the very minimum last grade post. This factor has been mentioned by the respondents and rejected the application of the petitioner as early as on 12.10.1988.

4. Thereafter, the issue had been kept in silence for some time, probably, the petitioner would have waited for her daughter to attain majority and to get qualified herself to seek for compassionate appointment.

5. After 17 years, from the death of the petitioner's husband, the petitioner made an application once again on 27.01.2003, seeking compassionate appointment for her daughter and the said application was rejected by the respondents, through the impugned order dated 09.06.2003. In the impugned order, the respondents had stated that, the request of the petitioner seeking compassionate appointment had been turned out, for want of minimum educational qualification and this was intimated to the petitioner and after 17 years, i.e., on 27.01.2003, the present application had been filed seeking compassionate appointment for the petitioner's daughter, since the same was made belatedly, it cannot be considered at this point of time., accordingly, it was rejected. Challenging the said order dated 09.06.2003, this writ petition has been filed.

6. Learned counsel appearing for the petitioner would submit that, no doubt that, there had been time limit for making an application for compassionate appointment and in this regard, he relied upon the letter of Government of Tamil Nadu, Labour and Employment Department No.39924/Q1/95-1 dated 11.10.95, which reads thus :

" In this connection, the District Collector, Tirunelveli Kattabomman District has sought for clarifications whether the time limit of three years period specified in the Government Order are applicable to the dependants of the Government Servants who died/to the date of issue of the /-prior Government Order. In this connection, it is clarified that the time limit of three years period

specified in the Government Order first cited is applicable only to the defendants of the Government Servants those who died while inservice on or after 26.06.95 and the above orders are not applicable to the past cases. Further the Government clarify that the age limit of 50 years for appointment under the scheme in the case of widows as ordered in the said Government Order is also applicable only to the widows of the Government servants those who died on or after 26.06.95."

7. By relying upon, the said Government letter, the learned counsel appearing for the petitioner would submit that, if at all the limitation of the three years period fixed for making an application seeking compassionate appointment, that would be applicable only to the cases where, the Government Servant died on or after 26.06.1995, which means, the application made for compassionate appointment pursuant to the death of the Government servant which occurred prior to 26.06.1995, the said three years fixation may not be applicable. Therefore, in this context, the learned counsel would submit that, in the case in hand, since the death of the deceased employee had taken place on 10.06.86 well before the cut off date, i.e., on 26.06.1995 and therefore, the said application submitted by the petitioner on 27.01.2003, seeking compassionate appointment for her daughter can very well be accepted.

8. Learned counsel appearing for the petitioner would also submit that, moreover, at the time of the death of the employee, the petitioner's daughter was minor and she attained the majority only in 2003, where she completed higher secondary course also, thereafter, immediately on attaining majority as well as after completion of higher secondary course, this application was made therefore, the delay caused in making the application on the part of the petitioner cannot be attributed on the petitioner as she had taken waiting period to prove her right and once the family member of the deceased Government Servant become eligible to get compassionate appointment, such application was made, therefore, the same ought not to have been rejected.

9. Per Contra, Mr.K.Ravikumar, learned Additional Government Pleader appearing for the respondents would submit that, when the petitioner made an application immediately, after the death of the Government Servant, the same was considered by the respondent forthwith. Further, it was found that the petitioner did not have any educational qualification therefore, there was no scope for giving any compassionate appointment to the petitioner. This factor has in fact, been

communicated to the petitioner by the respondents department as early as in the year 1988. Thereafter, for several years nothing was forthcoming from the petitioner and only after 17 years from the date of death of the petitioner's husband, the application has been made only on 27.01.2003 seeking such compassionate appointment for her daughter.

10. In this context, the learned Additional Government Pleader would submit that, the compassionate appointment is given for family members of the deceased Government Servant only in order to overcome the penurious circumstance and indigent situation where the Government Servant's family is placed, because of the sudden death of the head of the family, who was the only breadwinner. The said penurious circumstances and indigent situation cannot be expected to prevail in a family for decades together.

11. Moreover, when the law is well settled in this regard that, the compassionate appointment is complete deviation from the regular method of selection of appointment in public employment, such a deviated method should be adopted only in deserving cases where really the family is in penurious situation and the application made within a stipulated time.

12. In absence of the application being made from the qualified prerson of the deceased Government Servant's family within a stipulated time and if it is made after several years, it cannot be construed that still the family is in indigent circumstances and therefore, the claim of compassionate appointment cannot be extended to that level. Hence, the rejection now made by the respondents, through the impugned order is fully justifiable.

13. I have considered, the said submissions made by the learned counsel appearing for both sides and also have perused the materials placed before this Court.

14. As rightly pointed out by the learned Additional Government Pleader appearing for the respondents, compassionate appointment is made only to bail out the family which is suddenly placed in a penurious situation because of the untimely death of the head of the family. In the case in hand, the death was occurred in the year 1986, immediately, the application seems to have been filed by the petitioner seeking compassionate appointment for her. Though the same was considered by the respondents, it could not be materialised because the petitioner admittedly did not have any educational qualification. Since no one was eligible to be considered for compassionate appointment in the family of the deceased Government servant, the said application made by the petitioner was rightly rejected.

15. Subsequently, for several years nothing was forthcoming, and after 17 years, the present application was filed in the year 2003 seeking compassionate appointment for the petitioner's daughter.

16. This writ petition has been pending for nearly about 15 years and altogether as of now, there had been 32 years gone by between the date of death of the Government servant and today. All these 32 years, it cannot be accepted that, a family would have continued with penurious circumstances and indigent situation.

17. Therefore, at this juncture, if this Court direct the respondents to show its indulgence on the application of the petitioner to explore the possibility of compassionate appointment to the petitioner's daughter that will become a wrong precedent as if the application for compassionate appointment can be entertained at any point of time even after three decades.

18. The scheme of compassionate appointment is of course is a deviation from the regular recruitment method for public employment and therefore, the said deviated method can be adopted only in deserving cases and only after ascertaining the family circumstances of the Government Servant as to whether, they have been in continuous indigent circumstances.

19. Here in the case in hand, nothing has been stated before this Court to show that, the petitioner's family still has been in continuous indigent circumstances which requires indulgence of the respondents to grant compassionate appointment to the petitioner's family members.

20. Therefore, for all these reasons, this Court find no infirmity in the order passed by the respondents which is impugned herein and this Court also finds that the petitioner is not deserving to get any direction from this Court at this point of time, since three decades have gone by from the date of death of her husband, i.e., the deceased Government Servant.

21. For all these reasons, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

smi

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

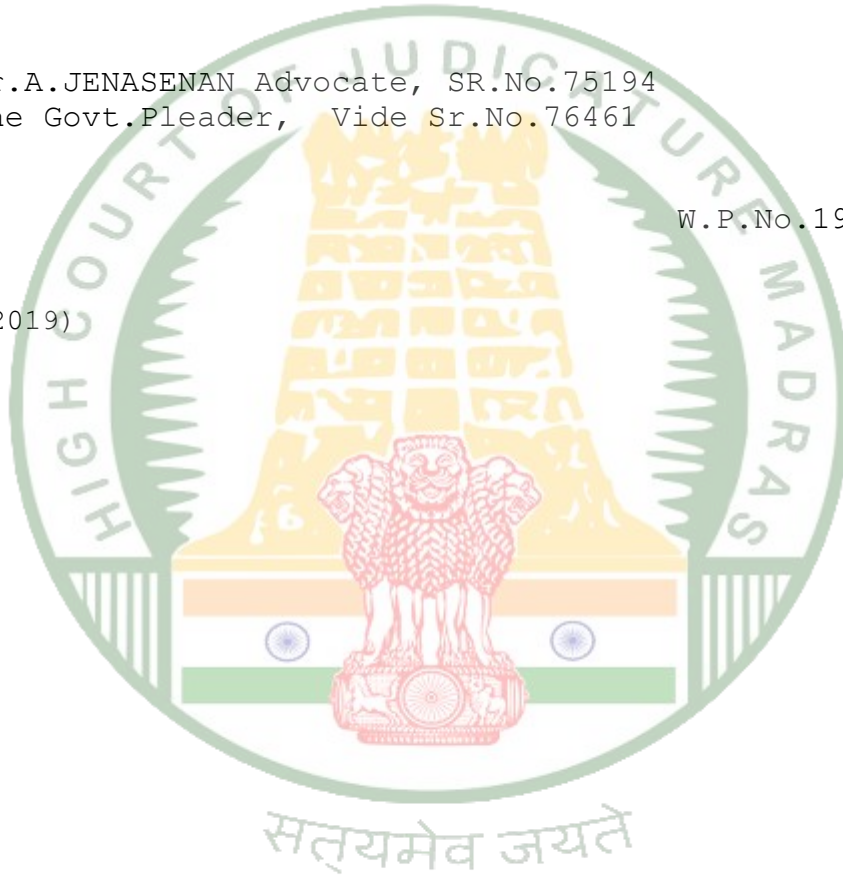
To

1. The Chief Engineer,
Highways Department,
Chepauk,
Chennai- 600 005.
2. The Divisional Engineer (H),
National Highways formerly known as
Tribal Area Development Works,
Subramaniam Nagar, Salem-5.

+1cc to Mr.A.JENASENAN Advocate, SR.No.75194
+1cc to the Govt.Pleader, Vide Sr.No.76461

W.P.No.19659 of 2004

Kak(01.10.2019)



WEB COPY