

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1474 of 2017

M.Boopathy

... Appellant

versus

1. State of Tamil Nadu,
Rep. By the Joint Director,
Medical & Rural and Family
Welfare Department,
Tiruvannamalai District,
Tiruvannamalai.
2. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.
3. The Joint Director of Nalappanigal,
Tiruvannamalai District,
Tiruvannamalai.
4. Medical Officer,
Government Hospital,
Arani, Cheyyar Taluk,
Tiruvannamalai District. ... Respondents

Appeal filed against the order passed by this Court dated
08.08.2017 passed in W.P.No.11200 of 2015.

W.P.No.11200 of 2015:

Writ Petition filed under Article 226 of the constitution of India to issue a certiorarified Mandamus Calling the records pertaining to the order of the 3rd Respondent which is made in O.Mu.No. 4928/Ni 3/2014 dated 03.02.2015 and quash the same consequently to direct the Respondents to appoint the Petitioner on compassionate grounds in anyone of the vacant post on considering his educational qualifications.

For appellant	: Mr.R.Malaichamy
For Respondents	: Mr.K.Karthikeyan Government Advocate

J U D G M E N T
(made by R.SUBRAMANIAN, J.)

The appellant in this intra Court Appeal challenges the Order dated 08.08.2017 made in WP No.11200 of 2015. The said Writ Petition was filed by the appellant, challenging the Order of the 3rd respondent dated 03.02.2015, in and by which, the request of the appellant for compassionate appointment, was rejected on the ground that the application has been made nearly eight years, after the death of the Government Servant, viz. Thiru.A.Mathiyazhan, who working as a sweeper in the Government Medical Hospital at Arani. The appellant's father A.Mathiyazhan, died on 20.12.2001, while in service.

2. According to the appellant, his mother Tmt.Sampooranam was engaged as a casual worker on daily wages basis in the Government Hospital, Arani, after the death of his father. Unfortunately, his mother also died on 06.10.2003. The appellant was 9 years old, when his father died and he was 11 years old, when his mother died. Therefore, the appellant was orphaned at the age of 11 years. The appellant had sought for compassionate appointment, vide his application dated 06.08.2009, after he attained majority. The application was rejected by the 3rd respondent by the order impugned in the Writ Petition, dated 03.02.2015, on the ground that the application is belated having been filed, after eight years, after the death of the Government Servant. The Writ Petition filed by the appellant in WP No.11200 of 2015 also came to be dismissed on the said ground of delay.

3. We have heard Mr.R.Malaichamy, learned counsel appearing for the appellant and Mr.K.Karthikeyan, learned Government Advocate appearing for the respondents.

4. Mr.R.Malaichamy, learned counsel appearing for the appellant would contend that the appellant was a minor on the date of death of his parents and therefore, he could made an application only after having attained majority. He would further contend that the compassionate appointments are made for addressing the immediate necessities of the family, which is left in penury on the death of the sole bread winner. Mr.R.Malaichamy, would submit that this is a fit case, where the respondents should have treated the matter on real compassion and should not have rejected the application of the appellant solely on the ground of delay.

5. Per contra, Mr.K.Karthikeyan, learned Government Advocate appearing for the respondents would contend that in view of the Government orders that are in force, the appellant's application seeking compassionate appointment dated 06.08.2009 is clearly

barred by limitation. He would also invite the attention of this Court to the Government Orders in G.O.M.S.No.120 of 1995 dated 26.06.1995 and G.O.M.S.No.202 of 2007 dated 08.10.2007. Relying upon the said above Government Orders, the learned Government Advocate would contend that the Government cannot be expected to reserve a post until the heir of the Government Servant, who was minor at the time of death, attained majority. The learned Single Judge has also relied on the said Government Orders for rejecting the request of the petitioner for the compassionate appointment.

6. Mr.R.Malaichamy, learned counsel appearing for the appellant would point out that the application of the petitioner seeking compassionate appointment, made on 06.08.2009, was kept pending for nearly six years, before being rejected on the ground of delay on 03.02.2015. He would submit that the respondents by keeping his application pending for nearly six years, had given the impression that the application would be considered favourably. It is also seen from the Certificate granted by the Tahsildar, Cheyyar that the appellant is really living in penury and he has no property. Though he was paid family pension, the same also was stopped, when the appellant attained the age of 21 years.

7. While we find no infirmity in the order of the learned Single Judge in concluding that the application for the compassionate appointment made by the petitioner, eight years after the death of the Government Servant, cannot be entertained, We are of the considered opinion that the peculiar facts and circumstances of the case, require a sympathetic consideration of the plight of the appellant. As already pointed out the appellant lost his father when he was 9 years old and his mother also died, when he was about 11 years old. It is also on record that the mother of the appellant, Smt. Sampooranam was engaged as a daily wage casual worker by the 4th respondent in the Government Hospital till her death in the year 2003. This factual contention of the appellant has not been denied by the respondents in the counter affidavit. In fact, the employment of mother as daily wage earner has been admitted by the respondents.

8. In the above back drop and taking into account the fact that the respondents have kept the application of the appellant seeking compassionate appointment pending for more than six years, we deem it fit, to issue a direction to the respondents to consider the case of the appellant's sympathetically for compassionate appointment atleast as a daily wage earner.

9. In view of the above, the Writ Appeal is disposed of with a direction to the respondents to consider the claim of the appellant for compassionate appointment atleast on daily wages

basis, considering the peculiar facts and circumstances of the case, more particularly the fact that the application of the appellant was kept pending nearly for a period for almost eight years by the respondents.

10. The Writ Appeal stands disposed of with the above direction. There shall be no order as to costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

jv

To

1. The Joint Director,
Govt. of Tamil Nadu,
Medical & Rural and Family
Welfare Department,
Tiruvannamalai District,
Tiruvannamalai.
2. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.
3. The Joint Director of Nalappanigal,
Tiruvannamalai District,
Tiruvannamalai.
4. Medical Officer,
Government Hospital,
Arani, Cheyyar Taluk,
Tiruvannamalai District.

+1 CC to Mr.R. Malaichamy, Advocate sr 25006.
+1 Cc to Govt. Pleader sr 26811, 25632.

W.A.No.1474 of 2017

VBA(CO)
SP(26/04/2018)