

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.3.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1563 of 2017

T.Dhanasundari ... Appellant / Petitioner

Vs

The General Manager
Chennai Metropolitan Water Supply and
Sewerage Board No.1 Pumping Station Road
Chindadripet
Chennai-600 002 ... Respondent / Respondent

Appeal under clause 15 of letter patent filed against the order passed by this Court dated 14/09/2017 in W.P.No.1441/2016 .

Prayer in W.P.No.1441 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned order of respondent herein dated 3.11.2015 made in Na.Ka. No. SEKUWA/ PAMANI / NIMA4/ 49751/2015 quash the same and consequently direct the respondent herein to entertain the application of the petitioner dated 20.09.2015 seeking to provide employment to her daughter T.Vijayalakshmi on compassionate grounds

For appellant : Mr.C.Sivanesan

For Respondent : Mr.N.Ramesh

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The appellant initially filed an application for compassionate appointment to her son Thiru.T.Jayakumar, consequent to the death of her husband, who was employed as Junior Accounts Officer in the Chennai Metropolitan Water Supply and Sewerage Board (hereinafter referred to as CMWSS Board). The application was kept pending indefinitely by the respondent. Meantime, Thiru.T.Jayakumar died in an accident. The appellant immediately submitted another application for giving employment

to her daughter. The application was dismissed on the ground that it was given belatedly. The said order was unsuccessfully challenged before the writ Court. Feeling aggrieved, the appellant is before this Court.

2. We have heard the learned counsel for the appellant. We have also heard the learned Standing Counsel for the respondent.

3. The appellant is the widow of Thiru.T.Thiruvankadam who was employed as Junior Accounts Officer in the CMWSS Board. The employee died in harness on 3 January 2009. He was survived by the appellant, two daughters and one son. Since the appellant was unemployed, the family was eligible for compassionate appointment. The appellant therefore submitted an application for giving employment to her son. The name of Thiru.T.Jayakumar, son of the appellant was kept in the waiting list for compassionate appointment. There was no follow up action taken by the respondent to give him compassionate appointment. The applicant Thiru.T.Jayakumar, in the meantime, died on 21 December 2014. Since there was no support for the family, and they were living in indigent circumstances, another application was given by the appellant on 20 October 2015 to give appointment to her unmarried daughter on compassionate ground. The respondent by order dated 3 November 2015, rejected the request on the ground that the application was made after a period of three years and there is no provision for substituting the name of the applicant for compassionate appointment.

4. The appellant challenged the order dated 3 November 2015 before the writ court in W.P.No.1441 of 2016. The learned Single Judge without advertng to the issue raised by the appellant, concurred with the finding given by the respondent and dismissed the Writ Petition. Challenging the said order, this intra Court appeal is filed.

5. There is no dispute that within the prescribed period of three years application for compassionate appointment was submitted by the appellant. The request originally was to give appointment to her son. The respondent kept the application for compassionate appointment pending without taking follow up action. The application was put in the waiting list. In the meantime, the applicant died. The appellant immediately submitted application for substitution of the name.

6. The application was rejected on two grounds, the first ground being limitation and the second being absence of a provision for substitution of the name.

Discussion :-

First Ground - Non submission of application within three years

7. There is no merit in the contention taken by the respondent that the application was not made within a period of three years in view of the fact that the original application was filed within the period indicated in the order impugned before the writ court. The application submitted after the death of the son must be taken along with the application initially given within the prescribed period. Limitation is for submitting application for compassionate appointment. Here in the subject case, the appellant submitted the application within a period of three years. Unfortunately, her son, for whom appointment was sought, died subsequently. It was only under the said circumstances, the appellant made a subsequent application to substitute his name. The second application has to be considered as an application made originally because of the death of her son. We are therefore of the view that the respondent was not correct in rejecting the application on the ground of limitation.

Second Ground - Absence of provision

8. Nobody expected that the son of the applicant would die during the currency of the application for compassionate appointment. In case the appointment was given and thereafter the applicant died, his legal representative would be in a position to seek compassionate appointment. The respondent was at fault for keeping the application pending for years together. The application is rejected on the ground that there is no provision for substitution. The question of substitution has arisen on account of keeping the application pending by the respondent. It is not possible to anticipate things of this kind so as to make a provision in the regulations for substitution. The authority has to take into account the subsequent events which made the appellant to submit the application for substitution of the name of the applicant for employment. We are therefore of the view that both the reasons given by the respondent for rejecting the application for compassionate appointment are unsustainable on facts and law.

9. The learned single Judge dismissed the Writ Petition primarily on the ground of limitation. The limitation is a mixed question of fact and law. In the subject case, the appellant explained the reasons for the substitution of the name and the necessity to give another application. Such being the factual position, the respondent was not correct in rejecting the application for compassionate appointment.

10. The order dated 3 November 2015 on the file of the respondent is set aside. The order dated 14 September 2017 in W.P.No.1441 of 2016 is also set aside. The Writ Petition in W.P.No.1441 of 2016 is allowed. The respondent is directed to consider the application submitted by the appellant for compassionate appointment to her daughter and pass appropriate orders as expeditiously as possible and in any case, within a period of three months from the date of receipt of a copy of this judgment.

11. The intra court appeal is allowed as indicated above. No costs. Consequently, C.M.P.No.20494 of 2017 is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

1.The General Manager
Chennai Metropolitan Water Supply and
Sewerage Board No.1 Pumping Station Road
Chindadripet
Chennai-600 002

+1cc to Mr.M.Baskaran, Advocate, sr.no.23670

+1cc to Mr.N.Ramesh, Advocate, sr.no.24452

W.A.No.1563 of 2017

NMI (CO)

RRK (31/05/18)

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