

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.1721 of 2017

D.C.Chandru

... Appellant

versus

1. The Principal Secretary
Public Works Department
Fort St. George, Chennai 600 009.

2. The Chief Engineer,
Public Works Department,
Water Resources Department and
Chief Engineer (General),
Chepauk, Chennai 600 005.

3. The Executive Engineer,
Quality Control Division,
Water Resources Department,
Chepauk, Chennai 600 005.

4. The Assistant Executive Engineer,
Water Resources Department,
Quality Control, Sub Division,
Fort, Vellore 632 004.

... Respondents

Appeal filed against the order passed by this Court dated
17.07.2017 passed in W.P.No.18092 of 2017.

WP.No.18092 of 2017:Petition filed under article 226 of
Constitution of India, praying to issue a Writ of Certiorarified
Mandamus calling for the records of the 4th respondent in Letter
No.224/ Ko.23/ dated 11.08.2016 and quash the same and
consequently direct the respondents to appoint the petitioner on
compassionate grounds in their services within the time limit
that may be stipulated by this Honourable Court

For appellant : Mr.A.Subramani

For Respondents : Mr.K.Karthikeyan, Government Advocate

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

The appellant challenges the dismissal of the Writ Petition
in WP No.18092 of 2017, wherein the challenge was to the
rejection of Writ petitioner's application for compassionate

appointment by the impugned proceedings dated 11.08.2016.

2. The facts that led to the filing of the Writ Petition are as follows:

2.1. The appellant's father D.Chandrasekaran, who was working as Irrigation Assistant in the office of the 4th respondent, died in harness on 24.08.2010, leaving behind his wife Shanthi, one daughter Saranya and one son Chandru (appellant herein) and his mother Masiamma. The appellant was aged about 13 years on the date of the death of his father. He filed an application seeking compassionate appointment on 08.01.2013. The other two eligible legal heirs, viz. mother of the appellant Mrs. Shanthi and sister of the appellant Ms.Saranya, conveyed their no objection for the appellant being appointed on compassionate grounds.

2.2. The application on the appellant seeking compassionate appointment was rejected by the respondent on the ground that he was a minor on the date when the application was made. The order of rejection was passed on 11.08.2016. It is also seen from the records that the respondents had required the appellant to produce various records for considering his application for appointment on compassionate ground. By a communication dated 22.02.2014, the 4th respondent had called for certain certificates from the appellant. It is seen that those certificates were furnished by the appellant and thereafter, on 27.03.2015, the 4th respondent had returned the application stating that the appellant was only 15 years old on the date of his application, i.e., 08.01.2013. The appellant has resubmitted his application on 22.02.2016. Thereafter on 11.08.2016 the application of the appellant was rejected, on the very same ground, that is, he has not completed 18 years of age. The said order of rejection has been upheld by the learned Single Judge by the order dated 17.07.2017.

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

4. Mr.A.Subramani, learned counsel appearing for the appellant would contend that the Government orders in force, viz. G.O.M.S.No.120 of 1995 dated 25.06.1995 and G.O.M.S.No.202 of 2007 dated 08.10.2007, fixed a period of three years for receiving the application for appointment on compassionate grounds. The said three years period commenced on the date of the death of the Government Servant. It is not in dispute that the appellant had made the application within 3 years, along with the required documents. The other two legal heirs, viz. the mother and sister of the appellant have conveyed their no

objection for considering the application of the appellant on the compassionate grounds. It is not in dispute that vide G.O.Ms.No.42 Labour and Employment (Q1) Department, Government of Tamil Nadu, dated 12.03.2007, recommendations were made by the Staff Committee, wherein it was recommended that the application seeking appointment on compassionate ground has to be made within three years of the death of the Government Servant, even where the legal heir is a minor. And it was also instructed that it is not necessary to reserve the vacancy for the minor, under the compassionate ground, till he attains majority. Therefore, an obligation is imposed upon the appellant, who seeks compassionate appointment to make an application within three years of the death of the Government Servant. It is not in dispute that the father of the appellant died on 24.08.2010. The appellant has made his application on 08.01.2013, along with no objection letters from the other eligible legal heirs. Therefore, it is clear that the appellant had complied with the initial requirement of making an application within three years.

5. The respondents did not choose to reject the application immediately on the ground that the appellant is a minor. Further particulars were called for and it is not in dispute that the particulars called for were also furnished by the appellant. Almost after three years, the order impugned in the Writ Petition came to be passed on 11.08.2016, stating that the appellant was a minor on the date, when the application was made. The respondents have evidently over looked the fact that the appellant had in fact attained majority when the application came to be rejected. The date of birth of the appellant is shown as 09.05.1997. Therefore, he had attained majority on 09.05.2015. The application came to be rejected only on 11.08.2016, on which date the appellant has completed 19 years. The matter could be looked at from another angle also. If only the respondents have rejected the application of the appellant immediately or within a reasonable period from 08.01.2013 his sister, who was eligible, would have applied for compassionate appointment within the period of three years stipulated in the Government orders referred to above.

6. By keeping the application pending and entering into correspondence with the appellant, seeking further details, the respondents had effectively prevented the sister of the appellant from seeking appointment on compassionate ground. This in our view has resulted in denial of an opportunity to the family of the Government Servant, which shown to be living in penury due to the untimely demise of the sole bread winner of the family. Even in the order in the impugned Writ Petition, the learned Single Judge has referred to the various decisions of this Court and as well as the Hon'ble Supreme Court and has observed as follows:

"A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application within three years from the date of death, on attaining majority."

7. The learned Single Judge has also pointed out that the minimum age for entry into the Government Service is 18 years and no minor can be appointed in the service. Unfortunately, the fact that the appellant's application was kept pending for nearly three years was not brought to the notice of the learned Single Judge, when the Writ Petition was disposed of. On the day, when the application was rejected, the appellant has attained majority and he had completed 19 years, therefore, he is eligible for appointment though not on the date of his application. After all, the provision for compassionate appointment is made only to provide succor to the needy family of the Government servants, who die in harness, in order to enable the family get over the crises.

8. In the case on hand, the appellant was only about 13 years old when his father died in 2010. He has made an application within three years, seeking compassionate appointment. But the authorities had kept the applications pending for nearly three years and have chosen to return the same on 27.03.2015. The appellant had resubmitted the application along with required enclosures and the same was considered by the authorities and was rejected again on 11.08.2016, by which date, the appellant had attained majority and in fact, completed the age of 19 years. Therefore, we are of the view that the case on hand deserves a sympathetic treatment. It is not a case, where the appellant contributed for any delay. The appellant had made an application in time and if only, the application had been rejected promptly by the authorities on the ground that he was a minor on the date of the application, his sister, who was otherwise eligible, would have sought for compassionate appointment and there would have been no technical difficulty in her application being considered.

9. We are satisfied that even that opportunity has been denied to the family because of the delay in the disposal of the application of the appellant dated 08.01.2013 by the respondents. Of course the compassionate appointment is not a vested right, but at the same time an application for compassionate appointment should be considered with a real compassion and not with a strait jacket formula. We are therefore of the opinion that the authorities were not justified in rejecting the application of the appellant seeking compassionate appointment, on the ground that he was minor on

the date of the application, particularly, after he had attained majority.

10. For the foregoing reasons, we are constrained to set aside the order of the learned Single Judge. Accordingly, the order of the learned Single Judge is set aside. The order of the 4th respondent dated 11.08.2016, rejecting the application of the appellant seeking compassionate appointment, is quashed and there will be a direction to the respondents to consider and dispose of the case of the applicant for appointment on compassionate ground in their service within the period of twelve (12) weeks from the date of receipt of a copy of this order.

11. The Writ Appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Principal Secretary
Public Works Department
Fort St. George, Chennai 600 009.

2. The Chief Engineer,
Public Works Department,
Water Resources Department and
Chief Engineer (General),
Chepauk, Chennai 600 005.

3. The Executive Engineer,
Quality Control Division,
Water Resources Department,
Chepauk, Chennai 600 005.

4. The Assistant Executive Engineer,
Water Resources Department,
Quality Control, Sub Division,
Fort, Vellore 632 004.

+1 cc to Govt Pleader sr25633

+1 cc to Mr.A.Subramani Advocate sr 25068

W.A.No.1721 of 2017

aa16/04/2018