

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.1435 of 2018

M.Rajagiri

Appellant/Petitioner

vs

The District Collector,
Kancheepuram District,
Kancheepuram.

Respondent/Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.954 of 2017 dated 31.08.2017.

W.P.No.954 of 2017

Writ Petition filed under Article 226 of the Constitution of India, for issuance of writ Certiorari Mandamus to call for the records made in the impugned order dated 23.12.2016 in Na.Ka.39963/2013/A4 passed by the respondent quash the same and further direct the respondent to provide employment to the petitioner for compassionate appointment in any suitable post

For Appellant :: Mr.S.P.Sudalaiyandi

For Respondent :: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The order issued by the respondent in his proceedings dated 23.12.2016 rejecting the claim of compassionate appointment to the appellant herein / writ petitioner on the ground that the application was not submitted within a period of three years, was challenged by the appellant before this Court in W.P.No.954 of 2017. The learned single Judge dismissed the writ petition on

31.08.2017 by relying upon various judgments of the Hon'ble Supreme Court, holding that Compassionate Appointment Scheme is a scheme which is exceptional and hence cannot be stretched further to the extent of providing Government Appointment to the legal heirs of the deceased employee after a lapse of many years.

2.Challenging the order passed in the writ petition, the present writ appeal has been filed.

3.The learned counsel for the appellant has submitted that the finding of the learned single Judge that the application submitted by the appellant herein for compassionate appointment belatedly, is not correct. He submitted that the appellant filed the application within the time limit provided by the authority. He submitted that the appellant's father died on 15.07.2001 and the mother of the appellant submitted the application in January 2002, but the respondent did not pass any order on the ground that there was a ban issued by the Government for compassionate appointment from 29.11.2001 to 21.02.2006. After the ban was lifted by the Government, the appellant submitted his application on 20.11.2006. Thereafter, the Government itself passed an order in G.O.Ms.No.42 dated 12.03.2007 by which the Government extended the period of application for appointment on compassionate grounds for three months from the date of issue of the said order, considering the ban order for filling up of the vacant posts. It is also his specific submission that the appellant has submitted his application for compassionate appointment even in the year 2004 after attaining majority, but the respondent did not receive the said application on the ground that there was a ban order imposed by the Government of Tamil Nadu for compassionate appointment.

4.The learned Special Government Pleader appearing for the respondent has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order, after relying upon several judgments of the Hon'ble Supreme Court and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record.

6.The appellant's father died on 15.07.2001. According to the learned counsel for the appellant, the appellant's mother submitted the application for compassionate appointment in January 2002, but the respondent did not pass any order on the ground that there was a ban issued by the Government for compassionate appointment from 29.11.2001 to 21.02.2006. There is no dispute over the fact that there was a ban on compassionate appointment during the said period. After the ban

was lifted by the Government, the appellant submitted his application on 20.11.2006, which is also not in dispute. A copy of the order passed by the Government in G.O.Ms.No.42 dated 12.03.2007 is enclosed in Page No.7 of the typed set of papers, from which it is seen that the Government has extended the period for receiving applications for appointment on compassionate grounds for three months from the date of issue of the said order, considering the ban order for filling up of the vacant posts. It is the submission of the learned counsel for the appellant that the appellant has submitted his application for compassionate appointment in the year 2004 after attaining majority, but the respondent did not receive the said application on the ground that there was a ban order imposed by the Government of Tamil Nadu for compassionate appointment. Whether the appellant has submitted the application in the year 2004 or not, the fact remains that there was a ban for compassionate appointment during the period from 29.11.2001 to 21.02.2006. That period has to be excluded for calculating the period of three years. The appellant has submitted his application on 20.11.2006, which is not in dispute. If the ban period is excluded, it cannot be stated that the appellant has submitted his application belatedly.

7. In view of the above stated circumstances, the rejection of the appellant's application for compassionate appointment on the ground that it was submitted belatedly, does not hold good. Hence, the respondents are directed to consider the application dated 20.11.2006 made by the appellant for compassionate appointment and pass orders in accordance with law, if he is otherwise eligible. The impugned order passed by the learned single Judge is modified accordingly and the writ appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KM

To
The District Collector,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.S.P.Sudalaiyandi, Advocate, S.R.No.52657

W.A.No.1435 of 2018

VGII(CO)
GSP(03/08/2018)