

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.5170 of 2010

T.Kishore Kumar

... Petitioner

Vs

1.The Registrar,

Department of Registration,  
Office of the Registrar,  
No.120, Santhome High Road,  
Chennai-28.

2.The District Registrar,

Office of the District Registrar,  
Namakkal.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 28.10.2009 passed by the 1<sup>st</sup> respondent herein vide his proceedings Nimu No.33826/K2/2009, rejecting the request made by the petitioner herein seeking for appointment on compassionate grounds and quash the same and further direct the 1<sup>st</sup> respondent herein to appoint the petitioner in any suitable post taking into account his educational qualification.

For Petitioner : Ms.D.Bharathy for  
Mr.K.V.Shanmuganathan

For Respondents : Mr.T.M.Pappiah,  
Special Government Pleader

O R D E R

Heard Ms.D.Bharathy, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 28.10.2009 passed by the 1<sup>st</sup> respondent herein vide his proceedings Nimu No.33826/K2/2009, rejecting the request made by the petitioner herein seeking for appointment on compassionate grounds and quash the same and further direct the 1<sup>st</sup> respondent herein to

appoint the petitioner in any suitable post taking into account his educational qualification."

3. The case of the petitioner is as follows:-

The petitioner's father was working as Selection Grade Record Clerk. While in service, he died on 16.02.2002, leaving behind the petitioner and his wife. Immediately after the death of his father, his mother also died on 27.03.2002. At that time when the petitioner's father died, he was a minor and was studying in 7<sup>th</sup> Std. After the death of his parents, the petitioner was under the care of his paternal uncle as he was appointed as guardian by the competent Civil Court.

4. On 28.08.2002, the petitioner's guardian viz., his paternal uncle made a representation to the second respondent, seeking for consideration of compassionate appointment to the petitioner. Thereafter, on attaining the age of majority, a further representation was also sent on 20.09.2007. Both the representations made in 2002 and also in 2007, were received by the second respondent and the receipt of which had also been acknowledged.

5. In response to the application made on behalf of the petitioner, a communication was issued by the second respondent, directing the petitioner to submit his request in a proper format. While so, after a lapse of one year, vide proceedings dated 16.11.2009, the petitioner was informed that his request was rejected by the first respondent vide proceedings Nimu No.33826/K2/2009 dated 28.10.2009, on the ground of delay. The said rejection order is put to challenge in the present writ petition.

6. The learned counsel for the petitioner would submit that the rejection by the first respondent for the reason of delay suffers from non application of mind and the same was factually incorrect. In fact, within 6 months on the date of death of his father, on behalf of the petitioner, an application was made on 28.08.2002 by his paternal uncle and the receipt of the application also been endorsed in the application itself. Such being the case, the rejection of his application on the ground of delay cannot be countenanced both in law and on facts.

7. Although the petitioner was minor at that time, yet an application was made only to avoid any delay in making such application and the same was followed by another application on 20.09.2007, after attaining the age of majority by the petitioner. Therefore, the rejection order by the authority concerned, on the ground that no application was made within three years from the date of death of the petitioner's father, cannot stand the test of judicial scrutiny.

8. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and made his

submissions.

9. During the course of arguments, a copy of the requisition letter submitted on behalf of the petitioner dated 28.08.2002, has been produced with due acknowledgment from the second respondent Office and all other relevant certificates viz., the Death Certificate, Legal Heir Certificate and Birth Certificate etc., have also been produced before this Court.

10. Therefore, this Court does not see any justification to the basis of the rejection order passed by the first respondent, since admittedly the application for seeking compassionate appointment had been made well in time. A further application was also made in 2007 as aforesaid, after the petitioner attained the age of majority. That being the case, this Court does not appreciate as to the basis on which the rejection order was passed by the authority concerned. Such rejection order is per se malafide and the same suffers from misapplication and non application of mind. In such view of the matter, this Court has to necessarily interfere with the order passed by the authority vide proceedings dated 28.10.2009.

11. In view of the above, the proceedings of the first respondent in Nimu No.33826/K2/2009 dated 28.10.2009, is set aside. The respondents are directed to consider the request of the petitioner, seeking compassionate appointment, in any suitable post on the basis of the available instructions issued by the Government on the subject matter from time to time and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands allowed. No costs.

gsk

सत्यमेव जयते

Sd/-

Assistant Registrar

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Sub-Assistant Registrar

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To

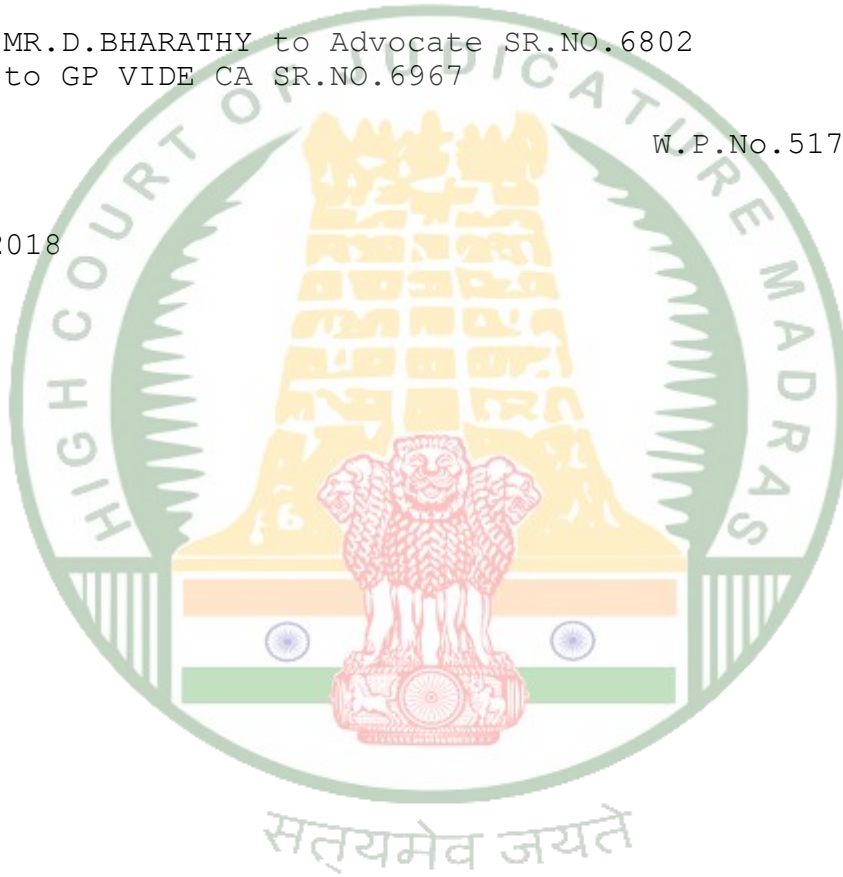
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+1CC MR.D.BHARATHY to Advocate SR.NO.6802  
+1CC to GP VIDE CA SR.NO.6967

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MK:20/02/2018



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