

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.32760 of 2016

P.Ramakrishnan

.. Petitioner

-vs-

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Revenue Department,
Fort. St. George, Chennai.

2.The District Collector,
Thiruvarur District,
Thiruvarur.

.. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Na.Ka.12331/2015/A3 dated 30.06.2016 and to quash the same and direct the second respondent to comply with the order passed by this Court in W.P. No.8563 of 2007 dated 17.03.2014.

For Petitioner :: Mr.P.Ravishankar Rao

For Respondents:: Mrs.P.Rajalakshmi,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the correctness of the order dated 30.06.2016 passed by the District Collector, Thiruvarur, the second respondent herein, rejecting the representation dated 22.06.2016 made by the petitioner pursuant to the order dated 17.03.2014 passed by this Court in W.P. No.8563 of 2007.

2.Learned counsel appearing for the petitioner would submit that the petitioner's father, while serving as Village Assistant, died on 20.11.1993 and at the time of his death, the petitioner was aged about 17 years and therefore, he applied for compassionate appointment on 06.07.1998, but the same was

rejected by an order dated 15.02.2001 citing a reason that the petitioner's father died before 01.06.1995 and hence, the rule failed to provide for compassionate appointment in respect of any eligible dependants of the deceased part time employee. Aggrieved by the same, when the petitioner challenged the said order before the Tamil Nadu State Administrative Tribunal in O.A. No.4126 of 2002, which was subsequently transferred to this Court and converted as W.P. No.8563 of 2007, this Court, by order dated 17.03.2014, considering the contention made by the learned counsel for the petitioner that as the petitioner's father died on 20.11.1993, much before the passing of G.O. Ms. No.625 dated 06.07.1995, which came into effect from 01.06.1995 retrospectively, the petitioner's case is not covered under the said G.O. and therefore, the same may be sympathetically considered for appointment on compassionate ground and the objection made by the learned Additional Government Pleader that the petitioner's father died as a part time employee and hence, the petitioner is not entitled to get compassionate appointment, was overruled by giving a direction to the respondents to consider the petitioner's case for appointment to any other suitable post.

3. Adding further learned counsel for the petitioner would submit that on the date of making his application namely, 06.07.1998, for compassionate appointment, the petitioner was only aged about 22 years. Secondly, this Court, by order dated 17.03.2014 has given a positive direction to the respondents to consider the case of the petitioner and even on the date of passing the order, the petitioner was well qualified and his age was below 35 years. Therefore, the impugned order passed by the second respondent, citing a different reason that the case of the petitioner cannot be considered as he is over aged and also his father, while serving as a Village Assistant, was not regularised at the time of his death since he was only a part time employee, cannot stand to legal scrutiny.

4. The learned Additional Government Pleader appearing for the respondents, referring to 54(a) of the Tamil Nadu State and Subordinate Service Rules, submitted that the petitioner is now aged about 39 years and therefore, no appointment can be made and the said Rule reads as follows:

54(a). Age concessions for appointment on compassionate grounds.

Notwithstanding anything contained in the Special Rules for various State and Subordinate Services regarding the maximum age limit for appointment by direct recruitment, in the case of appointment by compassionate grounds, the maximum age limit shall be 35 years in respect of the sons or the unmarried daughters and 50 years in respect of wife or husband

of the Government servant, who died in harness while in service, or retired from service on medical invalidation before attaining the age of 53 years, as the case may be.

5. Again referring to the counter affidavit filed by the second respondent would submit that the petitioner is holding an extent of 1.34.00 hectare dry land and his family is not living in an indigent circumstance and therefore, the question of compassionate appointment does not arise in this case. It is an admitted case that the petitioner's father, while serving as a Village Assistant, was not a regular employee and he was only a part time employee. Even on the date of death namely, 20.11.1993, his services were not regularised and he was continued only as a part time Village Assistant and therefore, the reason cited for rejecting the petitioner's request for compassionate appointment do not call for any interference.

6. This Court is unable to support the reason in the impugned order and also the submission made by the learned Additional Government Pleader appearing for the respondents for the simple reason that this issue was dealt with by this Court by order dated 08.09.2011 passed in W.P. No.21066 of 2010 (M.Devendran vs. The Secretary to the Government, Chennai and others). It is pertinent to extract the relevant portion of the order:

'9. A perusal of the impugned order dated 21.10.2008 reveals that the claim of the petitioner was rejected only on the sole ground to the effect that the services of the petitioner's father was not regularized at the time of his death i.e., on 29.10.1994 and the service of all the Village Assistants have been regularized only on 01.06.1995. It is seen that the impugned order does not refer any statutory prohibition for giving compassionate appointment in the event of the services of the deceased was not regularized. This Court is of the considered view that without any basis and in the absence of any statutory rules, the third respondent rejected the claim of the petitioner on the above said grounds. The learned counsel for the petitioner also rightly relied on the unreported order of the Division Bench of this Court dated 09.11.2009 in W.A.(MD) No. 558/2009, wherein the Division Bench of this Court, in a similar situation, has held as hereunder:

"6..... In our opinion, having regard to the fact that the deceased employee had put in 15 years of service and in the absence of any scheme stipulating conditions as to consideration of compassionate appointment to the defendants of a

regular employee, whether such employee has been made permanent or yet to be made permanent would be highly too technical to reject the application for appointment on compassionate ground."

In the said decision, the Division Bench of this Court further held as hereunder:

"7....The only reason for rejecting the appointment is that the deceased was not a regular employee. Inasmuch as we have rejected the said contention, the first respondent is entitled to the appointment as directed by the learned Single Judge, of course, to a suitable post which is available in the society."

In view taken by the Division Bench of this Court in the decision cited supra is squarely applicable to the facts of the instant case, as in this case also the only ground of rejection of the claim of the petitioner for compassionate appointment is to the effect that the services of his father as Village Assistant was not regularized on the date of his death.

10. Though the learned Government Advocate contended that there is a delay in preferring the application for seeking the relief of compassionate appointment as the same was not preferred within the stipulated period of three years from the date of the death of the father of the petitioner, it is to be stated that the application of the petitioner was not rejected on the ground of not preferring the claim within the stipulated time, as pointed out earlier.'

7.A cursory reading of the above observation shows that if a service is of an employee not regularised or holding only part time employment, dies in harness, his son or daughter or wife is eligible to get employment on compassionate ground, therefore, the stand taken by the respondents, both in the impugned order and in the counter affidavit that the petitioner's father served only as a Village Assistant which is not regularised post, but a part time post, has no legs to stand. More over, the repeated objections raised by the learned Additional Government Pleader that the petitioner is over aged as he is about 39 years, deserves to be repelled since the respondents cannot raise any objection on the ground of over age for the reason that admittedly on the date of death of the petitioner's father namely, 20.11.1993, the petitioner was aged

about 17 years and he has made an application on 06.07.1998 seeking compassionate appointment. Secondly, when his application seeking appointment was not considered, W.P. No.8563 of 2007 was filed seeking writ of mandamus and this Court also by order dated 17.03.2014 directed the respondents to consider the petitioner's case for appointment, that was also passed well within the age limit and the delay and the overage were caused by the respondents only. Therefore, the impugned order passed by the second respondent is set aside. The respondents are directed to provide compassionate appointment within a period of four weeks from the date of receipt of a copy of this order. Accordingly, this writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Revenue Department,
Fort. St. George, Chennai.
2. The District Collector,
Thiruvarur District,
Thiruvarur.

+1cc to Mr.R.Dasaratja Rao, Advocate SR.No.83914

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W.P.No.32760 of 2016

GMV (13/12/2018)

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