

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.9731 of 2012

Kuppammal

... Petitioner

Vs

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.

2.The Secretary to Government,
Municipal Administration,
Water Supply Department,
Fort St. George,
Chennai 600 009.

... 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 and quash the order E.PO.THU.NA.KA.No.M6/367/2011 dated 03.02.2011, issued by the first respondent and consequently direct the respondent to appoint the minor Keerthi, now aged about 17 years, on her attaining or majority on compassionate ground appointment.

For Petitioner : Ms.N.Beulah John Selvaraj

For Respondents : Ms.A.Karthikaa Ashok for R1

: Mr.T.M.Pappiah,

Special Government Pleader for R2

O R D E R

Heard Ms.N.Beulah John Selvaraj, learned counsel for the petitioner and Ms.A.Karthikaa Ashok, learned counsel appearing for the first respondent and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the second respondent.

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

"To issue a Writ of Certiorarified Mandamus, to call for the records and quash the order E.PO.THU.NA.KA.No.M6/367/2011 dated 03.02.2011, issued by the first respondent and consequently direct the

respondent to appoint the minor Keerthi, now aged about 17 years, on her attaining or majority on compassionate ground appointment."

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

The petitioner is a grandmother of the daughter for whom the compassionate appointment is being sought in the writ petition. The fact of the case is that the petitioner's son-in-law Mr.Srinivasan, was employed as an Assistant Motor Mechanic in the Corporation of Chennai. He died on 28.10.2001. Before his death, the petitioner's daughter i.e., wife of Mr.Srinivasan, also died on 21.10.2001. The grand daughter i.e., S.Keerthi was minor at that time both her parents were died. Originally, the aunt of Keerthi was appointed as guardian by Court proceedings in O.P.No.700/2003. Since her aunt Ms.Kala was not discharging her duties as guardian, she left the custody of her aunt and joined with the petitioner.

4. According to the petitioner, the aunt Ms.Kala, was not taking care of the interest of Keerthi and she appropriated all amounts which were due and payable to the minor Keerthi. Thereafter, the petitioner came to be appointed as Guardian of minor Keerthi in O.P.No.460 of 2010 on 26.07.2010.

5. In the said circumstances, the petitioner had given an application on behalf of minor Keerthi for compassionate appointment on the death of minor girl's father. However, the said application was rejected by proceedings dated 03.02.2011, by the first respondent only on the ground that the application was not submitted within three years from the date of death of the deceased father. The said order dated 03.02.2011, is put to challenge in the present writ petition.

6. The learned counsel for the petitioner would submit that on the day when the father died in 2001, the petitioner's granddaughter was a minor girl, therefore, she could not submit any representation. Moreover, certain proceedings were pending before the Court for appointment of guardian of the minor daughter and therefore, her interest could not be taken care of effectively. In such circumstances, the application was not submitted within the time.

7. As stated above, originally, when her aunt came to be appointed, she was more interested in taking her own interest and not taking sufficient care of the minor's interest and in fact, she was acting against the interest of the minor. Therefore, the petitioner herein had approached the competent Court in 2010 and got herself appointed as guardian of minor Keerthi. Immediately, after attaining the age of majority by the minor Keerthi, the petitioner being a guardian, submitted a

representation. However, the same was rejected mechanically on the ground of limitation. According to the rejection order, the application was submitted after eight years and therefore, the same could not be considered favourably.

8. Upon notice, learned counsel appearing for the respondents entered appearance and made his submissions to the effect that as per the scheme of compassionate appointment, the application has to be submitted within three years and in this case, the same has been submitted after eight years and therefore, the petitioner's granddaughter is not entitled to be considered for compassionate appointment.

9. This Court has considered the rival submissions of the learned counsels and perused the materials and pleadings placed on record. As rightly contended by the learned counsel for the petitioner, originally when the minor's aunt was appointed as guardian through Court proceedings in 2003, she was not discharging her duties as guardian of the minor. In fact, the money which was ordered to be deposited towards retirement benefits which was payable on the death of the deceased father, the amount had been appropriated by the guardian. Therefore, there was no occasion for making any application for compassionate appointment on behalf of the minor to the first respondent. Only when the petitioner got herself appointed as guardian on 26.07.2010, she has started taking care of the interest of the minor granddaughter and thereupon, she thought fit to submit an application for the compassionate appointment to the minor granddaughter.

10. While so, the first respondent mechanically without due appreciation and examination of the facts and circumstances of the case in which the minor daughter was placed, had chosen to reject the application by applying the period of limitation. In fact, the three year period of limitation can be applied only when the person seeking for compassionate appointment, was eligible in all respects for being considered for compassionate appointment. In this case, the petitioner's granddaughter became eligible for such consideration only after she attained the age of majority and as materials disclosed, an application was made immediately after the petitioner came to be appointed as guardian by proceedings dated 26.07.2010.

11. That being the case, the mechanical rejection by the first respondent does not advance the cause of the scheme providing for compassionate appointment, particularly, in the face of the fact that the minor daughter has lost her both parents within a span of few days and there was no one to take care of her except her grandmother, who is the petitioner before this Court. In the said circumstances, the first respondent is

expected to take a pragmatic and compassionate view to consider the petitioner's granddaughter for compassionate appointment.

12. For the above said reasons, the impugned order in E.P.O.THU.NA.KA.No.M6/367/2011 dated 03.02.2011, is set aside. The first respondent is directed to consider the claim of the petitioner's granddaughter S.Keerthi, for compassionate appointment in any considerable post on the basis of her qualification. It is made clear that the petitioner is also directed to submit a fresh comprehensive application disclosing the financial status and other requirements for considering her claim for compassionate appointment, within a period of two weeks from the date of receipt of a copy of this order. On such application being made, the first respondent is directed to dispose of the representation on merits and in accordance with law and pass orders within a period of eight weeks thereafter. This Court hopes that the first respondent adopts a sympathetic view, in view of the fact that the petitioner's granddaughter S.Keerthi had lost her parents at a very young age, within a span of few days.

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

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.

2.The Secretary to Government,
Municipal Administration,
Water Supply Department,
Fort St. George, Chennai 600 009.

+1cc to the Government Pleader, S.R.No. 23339
+1cc to Mr.KARTHIKAA ASHOK, Advocate, S.R.No. 22681
+1cc to Mr.N.BEULAH JOHNSELVARAJ, Advocate, S.R.No. 22682

W.P.No.9731 of 2012

TR(06/04/2018)