

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.22860 of 2013

K.Thandapani

... Petitioner

Versus

1. The Secretary to Government
Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Municipal
Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Villupuram Municipality,
Villupuram - 605 602.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of certiorarified mandamus, calling for the records relating to the impugned letter of the 3rd respondent issued in Na.Ka.No.1069/2011/H1 dated 17.02.2011 and the consequential letter of the 3rd respondent issued in Roc.No.3889/2005/H1 dated 10.11.2011 and quash the same and consequently direct the respondents 1 to 3 to appoint the petitioner on compassionate ground based on his petition dated 07.06.2001 within a reasonable period as may be fixed by this Court.

For Petitioner : Mr.T.Ranganathan
For R1 and R2 : Mrs.R.Janaki
Additional Government Pleader
For R3 : Mr.P.Srinivas

ORDER

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, challenging the letter of 3rd respondent issued in Na.Ka.No.1069/2011/H1 dated 17.02.2011 and the consequential letter of the said 3rd respondent issued in Roc.No.3889/2005/H1 dated 10.11.2011. In and by the said letters, the third respondent rejected the claim of the petitioner for appointment on compassionate grounds on the ground that such an appointment was sought for by the petitioner beyond three years from the date of death of his father.

2. It appears that the father of the petitioner, while working as Sanitary worker under the 3rd respondent, died in harness, on 01.12.2000. Thereafter, the petitioner said to have made an application on 07.06.2001, seeking appointment on compassionate ground on account of death of his father as per the scheme of the Government. However, the said application has not been acted upon. Again, he made another application on 25.04.2005 seeking compassionate appointment. But, such application has not been acted upon, hence, he sent a representation to the Chief Minister Grievance Cell on 24.08.2007, which was forwarded to the Commissioner of Municipal Administration, the 2nd respondent. On the basis of the communication received from the Chief Minister Grievance Cell, the Commissioner of Municipal Administration vide communication bearing reference Na.Ka.No. 51406/ 2007/H2, dated 25.09.2007, indicated that the claim of the petitioner for appointment on compassionate grounds shall be examined after receipt of a report from the third respondent. Thereafter, a reply was sent by the Commissioner of Municipal Administration to the Government Vide Na.Ka.No.19432/2009/H2 dated 11.08.2009 indicating therein that the petitioner had applied for compassionate appointment on 25.04.2005 after the death of his father on 01.12.2000 and such application has not been forwarded through the Regional Director of the Municipal Administration as it was beyond the period prescribed in G.O.Ms.No.29, dated 07.05.1998. A copy of the aforesaid letter was also sent to the petitioner. The petitioner, thereafter, again, made further application on 17.07.2009 to the 3rd respondent and the District Collector, Villupuram District on 31.01.2011. The Regional Director of Municipal Administration has also written to the 2nd respondent to accept the petitioner's application, which was made within the time limit, on humanitarian ground. However, there was a communication of the letter of the Information Officer vide O.Mu.No.34179/2009/A.Na.6, dated 20.08.2009 indicating the fact that the application of the petitioner is in process.

3. Thereafter, the petitioner, by a letter dated 31.08.2009 to the Commissioner, Villupuram Municipality, submitted the required certificate. The petitioner has also written a letter to the District Collector, Villupuram District, on 31.01.2011, indicating his grievances, stating that no order was passed on the application made by him for compassionate appointment. Thereafter, an order was passed by the 3rd respondent, vide Na.Ka.No.1069/2011/H1, dated 17.02.2011, i.e. the impugned order, rejecting the petitioner's application. The said order was intimated to the petitioner. The petitioner challenges the same to be illegal, arbitrary and contrary to G.O.Ms.No.42, Labour and Employment Department dated 12.03.2007 and the application ought not to have been rejected on the ground that it was made beyond the period of time. Hence, the petitioner made the prayer as stated above.

4. No counter affidavit has been filed by the Municipal Administration Department in spite of time given to them.

5. During the course of hearing, the learned counsel appearing for the petitioner submits that the petitioner had applied for compassionate appointment in the year 2001 and thereafter, in 2005 and in 2007 before the Chief Minister Grievance Cell. The Government, by its order in G.O.Ms.No.42, Labour and Employment Department, dated 12.03.2007, has categorically stated that for applying the compassionate appointment, the period of limitation is three years. However, considering the ban on recruitment from 29.11.2001 to 21.02.2006, the Government granted further period of three months, for applying compassionate appointment, to the persons, who had not applied within three years. But, the application of the petitioner on the aforesaid dates had been pending. Therefore, the same could not have been rejected on the ground that it is barred by limitation. Hence, such order of the authority being contrary to the aforesaid G.O., the same is liable to be quashed and the authority be directed to consider the petitioner's application on verification of the certificate furnished by him, within the stipulated period, by ignoring the clause of limitation and pass necessary orders on the application to give him compassionate appointment.

6. The learned counsel appearing for the respondent/Municipal Administration however submits that since the application was time barred, in as much as the petitioner had not applied within three years, his application was rightly rejected. Even after such rejection, the petitioner submitted repeated representations to one authority or the other. The fact remains that a person who seeks appointment on compassionate grounds must submit an application within three years from the date of death of the government servant. In the present case, admittedly, the petitioner submitted such an application beyond the period of three years, while so, the claim of the petitioner cannot be considered at this stage. The claim of the petitioner for appointment on compassionate grounds is hit by the principles of delay and laches and therefore also, the learned government Advocate submits, for dismissal of the writ petition.

7. It is needless to say that for compassionate appointment, as per the original scheme, if a person, who is employed in Government Service, died in harness after leaving the legal heirs, one of his legal heirs is entitled for appointment on compassionate ground, subject to the condition that the family of the government servant is in an indigent circumstances. The aforesaid indigent circumstance is subject to verification of certificates furnished by the person who applies for the post. If the application is made within the time limit, one of the family members of such deceased

Government servant on fulfillment of the criteria is entitled to appointment on compassionate ground, in as much as the aforesaid scheme has been formulated to ensure that the family of the deceased employee has to be given some source for their livelihood and bailed out from distress.

8. There was a ban for direct recruitment from 2001 to 2006, with the result, no compassionate appointment was given during such period in the State of Tamil Nadu. Subsequently, the Government, by taking into consideration of the facts and situation, came out with an order by granting liberty to the persons, who could not apply during the ban period, grace period of extension of time for submitting application for compassionate appointment vide the G.O.Ms.No.42 dated 12.03.2007. Even though the application of the petitioner could not be entertained on the ground that it was not submitted within the period of limitation of three years from the date of death of the Government servant dying in harness, but, in the G.O.Ms.No.42 dated 12.03.2007, it being clearly stated that a person, who had not applied for compassionate appointment within the time limit, can also apply for the same within the time as stipulated therein. Therefore, when the period of limitation of three years expired within the said ban period, even if an application filed thereafter, but, before the extended period in G.O., the same could not have been rejected on the ground of limitation of three years. Hence, even though the petitioner's claim that his application in time, i.e in the year 2001 is disputed, but, the application submitted by the petitioner in the year 2005 during the ban for employment, being not disputed in this case, it could not have been rejected on the ground of limitation of three years as prescribed in the scheme.

9. As far as the other contention of rejection of the prayer in the writ on the ground of delay and laches is concerned, since the rejection was made in the year 2007 and the petitioner also approached various forum to consider his claim for appointment on compassionate ground, thereafter, this Court is of the view that the petitioner's case cannot be thrown out on the ground of delay and laches. Therefore, taking note of the indigent circumstances pleaded by the petitioner and the petitioner belong to weaker section of the society, this Court hope and trust that the claim of the petitioner for appointment on compassionate ground can be favourably considered by the respondents. Accordingly, the writ petition is allowed. The impugned order stands quashed. The Secretary to the Government, Municipal Administration and Water Supply Department/first respondent is directed to consider the application of the petitioner for appointment on compassionate grounds, within a period of three months from the date of receipt of a copy of this order if the petitioner is otherwise eligible for appointment after verification of documents furnished by him. The petitioner shall also be

given an opportunity to furnish the wanting documents, if any, in support of his claim, within the stipulated period and on that ground, no rejection can be made. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ogy

To

1. The Secretary to Government
Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Municipal
Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Villupuram Municipality,
Villupuram - 605 602.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.20387

+1cc to Mr.T.Ranganathan, Advocate, S.R.No.20392

W.P.No.22860 of 2013

nm(CO)
GSP(12/04/2018)

WEB COPY