

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.33032 of 2012

P.Dinesh ... Petitioner

Versus

- 1.The Director,
O/o. The Director of Municipal Administration,
Chepauk,
Chennai-600 005.
- 2.The Commissioner,
Mettupalayam Municipality,
Mettupalayam,
Coimbatore District. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of rejection passed by the 2nd respondent vide his proceedings in Ref.No.Na.Ka.No.4458-2010-H1 dated 24.09.2012 and quash the same and consequently direct the second respondent to appoint the petitioner on compassionate grounds of death of his mother in the second respondent Municipality.

For Petitioner : Mr.S.Periyasamy

For Respondents: Mr.T.M.Pappiah
Spl. Govt. Pleader

ORDER

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

"To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of rejection passed by the 2nd respondent vide his proceedings in Ref.No.Na.Ka.No.4458-2010-H1 dated 24.09.2012 and quash the same and consequently direct the second respondent to appoint the petitioner on compassionate grounds of death of his mother in the second respondent Municipality."

2. The petitioner's mother was employed as Sweeper in the second respondent Municipality and she died on 22.10.2007 while in service. At the time of her death, she left behind her husband (father of the petitioner), petitioner, three other legal heirs including two brothers and one sister.

3. After the demise of the petitioner's mother, there was no sufficient income in the family, since the father also died on 31.12.2010. In the said circumstances, the petitioner's elder brother P.Murugesan, as the first son submitted a representation on 08.04.2010 within three years from the date of death of the petitioner's mother requesting for appointment on compassionate grounds. In response to the application submitted by the elder brother of the petitioner, an order was issued by the second respondent on 24.11.2010, rejecting the claim on the ground that the elder brother of the petitioner was over aged.

4. Thereafter, the present petitioner after obtaining consent from other legal heirs, submitted a representation on 22.12.2010 to the second respondent requesting for compassionate appointment for himself as he was fully qualified. However, the said representation came to be rejected on 03.08.2011 on the ground that the representation was barred by limitation as the same was not submitted within three years from the date of his mother's death. Thereafter, it appears that the further representation was made on 17.08.2012 to the Hon'ble Chief Minister Cell by the petitioner. In response to the same, final order was passed on 24.09.2012, once again rejecting the representation of the petitioner on the ground that the representation was barred by limitation. The said order is put to challenge in the present writ petition.

5. The learned counsel for the petitioner would submit that the rejection of the petitioner's request for compassionate appointment on the ground that it was not made within three years suffers from non-application of mind on the part of the authorities concerned for the simple reason that originally the elder brother P.Murugesan submitted a representation which was made well within the period of three years and the same was rejected by the authorities on the ground that his elder brother was over aged. Immediately the present petitioner renewed his representation in 2010 itself. The original rejection of the petitioner's elder brother's application was on 24.11.2010 and the representation has been submitted by the petitioner herein on 02.12.2010. Therefore, by no stretch of standard, the application made by the petitioner can said to be barred by limitation. Such representation can only considered as renewal of application submitted by the petitioner's elder brother. The learned counsel for the petitioner would submit that in any event, both the representations were submitted by the elder brother and the petitioner, have not been disposed of on merits and rejected only on the technical grounds viz., the elder brother of the petitioner was over aged and the petitioner's application is time barred. The authorities have therefore not applied their mind in regard to indigent circumstances the family was placed after the death of father and mother.

Therefore, the mechanical rejection of the petitioner's representation as time barred is being assailed in the writ petition.

6. Upon notice, Mr. T. M. Pappiah, the Special Government Pleader entered appearance on behalf of the respondents and made his submissions.

7. As rightly contended by the learned counsel for the petitioner that once the original application for compassionate appointment was made well within the period of three years, it is not open to the authority to reject the renewal application submitted by the petitioner herein in 2010 on the ground that the same was made after three year period of limitation. In fact, it was the authority who passed the order rejecting the claim of the petitioner's elder brother as he was over aged and therefore in the teeth of such order passed by the authority, it is not open to the authority to non-suit the petitioner and reject the application on the ground that the same was made after three years period.

8. As rightly contended by the learned counsel for the petitioner that the second application submitted by the petitioner was immediately after the rejection of the first application and therefore, the same has to be considered as one of renewal and not a fresh application. Therefore, the mechanical rejection of application for compassionate appointment has to be interfered with on the ground that the same suffers from non-application of mind.

9. For the above said reasons, this Court directs the second respondent to consider the representation submitted by the petitioner seeking compassionate appointment to any suitable post on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the second respondent shall take into consideration the indigent circumstances in which the family of the petitioner is placed and consider the case sympathetically and pass appropriate orders. In these circumstances, the impugned proceedings in Ref. No. Na. Ka. No. 4458-2010-H1 dated 24.09.2012, is set aside.

10. With the above direction, this Writ Petition stands disposed of. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Director,
O/o. The Director of Municipal Administration,
Chepauk,
Chennai-600 005.

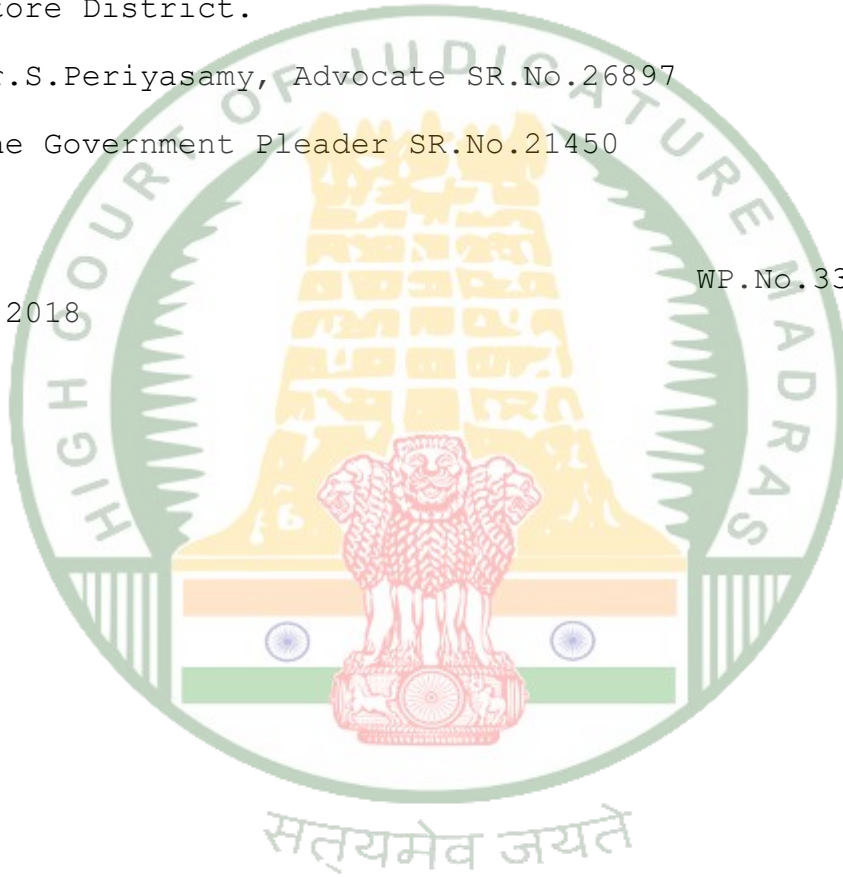
2.The Commissioner,
Mettupalayam Municipality,
Mettupalayam,
Coimbatore District.

+1cc to Mr.S.Periyasamy, Advocate SR.No.26897

+1cc to the Government Pleader SR.No.21450

SDR 06.04.2018

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