

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.29476 of 2010

M.Venugopal

.. Petitioner

Vs.

1. The Secretary to the Government,
Department of Labour and Employment,
Secretariat, Chennai - 600 009.
2. The Director,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Dean,
Coimbatore Medical College Hospital,
Coimbatore - 641 018. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent's letter Ref.No.80858/E2/4/06 dated 04.02.2008 and quash the same and consequently direct the first respondent to provide appropriate employment to the petitioner on compassionate ground in the second respondent's department.

For Petitioner : Mr.P.Saravanan

For Respondents : Mrs.M.E.Raniselvam (for R1 & R2)
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records relating to the order of the first respondent's letter Ref.No.80858/E2/4/06 dated 04.02.2008 and to quash the same and consequently, direct the first respondent to provide appropriate employment to the petitioner on compassionate ground in the second respondent's Department.

2. The case of the petitioner is that his father, V.Mani, was working as Sanitary worker in the third respondent's office and he died on 20.09.1979 due to illness, leaving behind his wife, two daughters and the petitioner, as his legal heirs. At the time of his father's death, the petitioner was 8 years old and her sisters were aged 3 and 2 years respectively.

3. On 28.09.1979, the petitioner's mother had given an application for appointment on compassionate ground to the third respondent, followed by reminder applications on 17.04.1980 and 17.04.1986 respectively. On 25.08.1986, the petitioner's mother had given a petition to the District Collector.

4. On 26.08.1986, the third respondent sent a letter to the District Collector stating that at present there is no vacancy and whenever vacancy arises, they will inform. Despite several representations and personal meetings, the third respondent has not given compassionate appointment and the efforts taken by the mother of the petitioner ended in vain.

5. According to the petitioner, in the mean time, he had completed 18 years. On 17.08.1993, the petitioner's mother submitted a representation stating that her son was studying final year B.Com. and if the third respondent is inclined to give compassionate appointment to her, such appointment may be given to the petitioner. On 06.11.1996, the third respondent informed the petitioner that there was no Junior Assistant post vacant at present and whenever, vacancy arises, the plea of the petitioner will be considered.

6. According to the petitioner, though the third respondent sent proposals and recommended petitioner's compassionate appointment, the second respondent did not consider the application of the petitioner. By the impugned order dated 04.02.2008, the request of the petitioner was rejected on the ground that he has not applied within three years from the date of death of his father. Challenging the same, the petitioner has filed the writ petition.

7. Refuting the averments made in the writ petition, the respondents filed counter stating that since there was no suitable post vacant when the petitioner's mother submitted application for compassionate appointment, the same was informed to the District Collector. It is true that the petitioner's mother requested in her application dated 17.08.1993 to give compassionate appointment to her son. It is stated that pursuant to the application received from the petitioner, the second respondent informed the petitioner that there was no Junior Assistant/Typist post vacant and, therefore, the application of the petitioner cannot be considered. It is stated that the

application of the petitioner was not in accordance with G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995 and, therefore, the same was rejected.

8. I heard Mr.P.Saravanan, learned counsel appearing for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents 1 and 2 and also perused the materials available on record.

9. The learned counsel for the petitioner submitted that immediately after the demise of the father of the petitioner, his mother submitted an application seeking compassionate ground appointment, but the third respondent informed the petitioner's mother that there was no vacancy exist and as and when vacancy arises, she will be given compassionate appointment. He submitted that despite several representations sent by the petitioner's mother, the respondents have not given compassionate appointment to the petitioner's mother. Since the respondent authorities have not considered the grievance of the petitioner's mother, on 17.08.2003, she submitted an application seeking to give compassionate appointment to the petitioner and the same was rejected by the first respondent on the ground that the application was made after three years from the date of death of a Government servant.

10. According to the learned counsel for the petitioner, G.O.Ms.No.120 Labour and Employment Department, dated 26.06.1995 stipulates that application seeking compassionate appointment should be made within three years of the death of Government servant. The petitioner has given application for compassionate appointment on 22.09.1993 within the period stipulated in the G.O. He argued that the first respondent while rejecting the request of the petitioner had not applied his mind properly. Therefore, the order impugned needs to be set aside.

11. Per contra, the learned Additional Government Pleader submitted that the petitioner's father expired on 20.09.1979, whereas the petitioner has given application seeking compassionate appointment on 17.08.1993 i.e., much beyond the period of three years, and therefore, the rejection order passed by the first respondent was as per the rules in force and the same cannot be interfered with.

12. It is not in dispute that the petitioner's father was employed in the third respondent College and on 20.09.1979, he died. Thereafter, on 28.09.1979 itself, the petitioner's mother submitted an application seeking appointment on compassionate grounds, well within the limitation period. It appears that subsequent to the application dated 28.09.1979, the petitioner's mother sent several representations to the respondent authorities seeking compassionate appointment. On 22.09.1986,

the third respondent informed the petitioner's mother that since there was no vacancy, whenever vacancy arises, she will be considered.

13. It is seen that from 28.09.1979 to 22.09.1986, the petitioner's mother approached the respondent authorities seeking compassionate appointment. Since the sincere efforts taken by the petitioner's mother ended in vain, she submitted an application to the third respondent on 17.08.1993 stating that her son was doing B.Com. final year and if the authorities are inclined to give compassionate appointment to her, the same should be given to her son.

14. After receipt of the application from the petitioner's mother, the third respondent in his letter dated 06.11.1996 informed the petitioner's mother that there was no Junior Assistant post vacant and whenever vacancy arises, necessary steps would be taken to give compassionate appointment. The aforesaid letter of the third respondent would show that the claim of the petitioner's mother seeking compassionate appointment to her son would positively be considered by the respondent authorities.

15. It is seen from the typed set of papers that, on 22.09.1993, the petitioner has given a proforma application seeking compassionate appointment, which was received by the third respondent and upon receipt of the proforma, the third respondent sent a letter dated 06.10.1993 to the petitioner's mother directing to produce certain documents.

16. It is also seen that from 06.10.1993 to 03.07.1998, there was exchange of correspondence between the petitioner's mother and the third respondent. In his letter dated 3.7.1998, the third respondent informed the petitioner as under:

"மருத்துவக்கல்வி இயக்குநர், சென்னை கடித ஒ.மு.எண்.35378/நிபி2/4/97 நாள் 24.10.97ல் திரு.எம்.வேணுகோபாலின் விண்ணப்பம் அங்கு பராமரிக்கப்படும் பதிவேட்டில் பதியப்பட்டதாகவும், இளநிலை உதவியாளர் (மற்றும்) தட்டச்சர் பதவி காலம் ஏற்படும்போது இவரது கோரிக்கை பரிசீலிக்கப்படும் எனக் கூறப்பட்டுள்ளது. மேலும் இவர் தனக்கு இளநிலை உதவியாளர் பதவி வேண்டும் என வேண்டியுள்ளதால், இவரை மருத்துவத் துறையிலுள்ள வேறு பணியிடங்களுக்கு நியமிக்க இயலாது என்பதையும் தெரிவித்துக் கொள்ளப்படுகிறது."

17. The aforesaid letter of the third respondent would clearly show that the application of the petitioner seeking compassionate appointment had been received and entered in the register of the office of the third respondent. In his letter dated 03.07.1998, the third respondent also informed the petitioner that since there was no Junior Assistant post vacant and the petitioner has sought only Junior Assistant post, as and when vacancy arises, his request will be considered, which would

clearly show that the claim of the petitioner will be positively considered when Junior Assistant vacant arose.

18. It is pertinent to note that at the time of addressing the letter dated 03.07.1998, the third respondent had not raised any objection that the petitioner has not made an application within three years from the date of death of his father. But, only under the impugned order dated 04.02.2008, the second respondent informed the petitioner that his request for appointment on compassionate ground cannot be considered, as he had submitted application only on 11.06.1997 i.e, after the period of three years.

19. As stated supra, the respondent authorities have failed to act on the application of the petitioner's mother submitted way back in 1979 seeking compassionate appointment immediately after the death of her husband. No order was passed on the application of the petitioner's mother. Further, the subsequent request of the petitioner's mother dated 17.08.1993 seeking appointment for her son on compassionate ground was also acted upon and there was exchange of correspondence between the petitioner's mother and the respondent authorities to the effect that there was no vacancy and whenever vacancy arises, the request of the petitioner's mother will be considered.

20. The submission of proforma application by the petitioner dated 22.09.1993 was admitted by the respondent authorities and the said application was acted upon. The petitioner was also informed that since there was no Junior Assistant post vacant, as when Junior Assistant post vacant arises, the request of the petitioner will be considered by the respondent authorities.

21. It is pertinent to note that G.O.Ms.No.120, Labour and Employment Department, came into force on 26.06.1995 and the petitioner submitted application for compassionate ground on 22.09.1993 itself.

22. The learned Additional Government Pleader submitted that the Government issued orders lifting the ban for the appointment on compassionate ground vide G.O.Ms.No.42, Labour and Employment Department, dated 12.03.2000 and extended the period for receiving application for appointment on compassionate grounds for three months from the date of issue of the G.O. He submitted that though the petitioner's father died on 20.09.1979, the petitioner has submitted application on 17.8.1993 after the period of three years. Therefore, the order impugned was passed as per the rules in force.

23. The argument of the learned Additional Government Pleader cannot be countenanced for the reason that immediately after the death of her husband, the petitioner's mother

submitted application seeking compassionate appointment. The submission of the application by the petitioner's mother in the year 1979 was not denied by the respondent authorities.

24. G.O.Ms.No.42, dated 12.03.2007 states that "extend the period for receiving application for appointment on compassionate grounds for three months from the date of issue of this order considering the ban order on filling up of vacant posts in force from 29.11.2001 to 21.02.2006".

25. Thus, as per the aforesaid G.O., the last date for giving application for compassionate grounds was 12.06.2007. But in the case on hand, the petitioner submitted application on 22.09.1993 itself and the same was also admitted by the respondents in their counter. Therefore, the claim of the petitioner seeking compassionate appointment was well within the time and the respondent authorities cannot say that the claim of the petitioner was barred by time.

26. As stated supra, though the petitioner's father died on 20.09.1979 and the petitioner's mother submitted application for compassionate ground, the same was not considered by the respondent authorities at the relevant point of time and no order rejecting the claim of the petitioner's mother was produced. Since her request was not considered by the respondent authorities, the petitioner's mother submitted application seeking compassionate appointment to her son by way of application dated 17.08.1993. It is seen that no order has been passed on the request of the petitioner's mother dated 17.08.1993. It is also seen that on 22.09.1993, the petitioner has submitted proforma application seeking compassionate appointment and the same was taken on file and informed the petitioner that whenever vacancy arose, his grievance would be considered. While things stood thus, the respondent authorities, all of a sudden, woke up and passed impugned order dated 04.02.1998 rejecting the claim of the petitioner after a period of nearly five years.

27. It is seen that in the order impugned dated 04.02.2008, the first respondent had failed to refer to the application of the petitioner, which itself shows non-application of mind and without considering the rules in force, the first respondent rejected the claim of the petitioner.

28. It is seen that when the family of the deceased is in indigent circumstances, in dire need of employment for eking out their livelihood, they cannot be given the runaround for a long period of 39 years from the date of death of Government servant.

29. In *Superintending Engineer, Madurai Electricity Distribution Circle v. V.Jaya* reported in (2007) 6 MLJ 1011, this Court held as follows:

"7. However, in a case of request for appointment on compassionate ground, however, the Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot ignore the very purpose of providing employment on compassionate ground to the dependant of an employee/government servant dying in harness in preference to anybody else as it is done so in order to mitigate the hardship to the family of the employee on account of his unexpected death while still in service. The concept of compassionate employment is intended to alleviate the distress of the family and it is for such purpose appointments are permissible and provided even in the rules and regulations and any rigid approach or too technical objections may defeat the very object of the scheme. It is for that purpose while considering the request for compassionate appointment, the authorities are expected to act as a Good Samaritan overlooking the cobwebs of technicalities." (emphasis supplied)

30. The respondent authorities have failed to adopt good Samaritan approach ignoring the fact that the petitioner's mother constantly making a request for appointment on compassionate ground as early as from 28.09.1979, which was not considered by the respondent authorities in proper perspective and dragged her for one reason or the other. If the respondent authorities considered the claim of the petitioner's mother when she had submitted application in the year 1979 itself by giving compassionate appointment to the post of sanitary worker/sweeper etc., the family of the petitioner consisting of four members would get benefited.

31. Statutory regulations provided for compassionate appointments for posts such as messenger, gardener, sweeper and sanitary worker, where the only qualification prescribed is ability to read and write in Tamil. When statutory regulations prescribe no educational qualification for appointment of the dependents of deceased employees to some of the lowest posts, the first respondent was not correct in considering the claim of the petitioner's mother.

32. It is the say of the petitioner that at the relevant point of time, the respondent authorities were given two compassionate appointment to P.Vijaya and P.A.Ahamad Ibrahim and the petitioner alone was discriminated. To rebut the same, the respondent authorities have not produced any record. Even

there was no denial in the counter affidavit that there were no compassionate appointments given.

33. In *Syed Khadim Hussain v. State of Bihar and others*, reported in (2006) 9 SCC 195, the Hon'ble Supreme Court held as under:

"5. We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.

6. As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The appeal is disposed of in the above terms. No costs."

34. In the case on hand, as stated supra, the petitioner's mother had submitted application well within the period of three years. Since the petitioner's mother would not be in a position to join the Government service, she requested the respondent authorities to give employment to her son. The request of the petitioner's mother, in my view, was bona fide. Since the application of the petitioner's mother was within three years from the date of death, the petitioner should have been considered in her place for compassionate appointment .

35. The respondent authorities have failed to take note of the fact that the family of deceased Government servant viz., P.Mani, was depending on him for livelihood as he was the only bread winner of the family and that after his death, his family was struggling to maintain themselves. The legitimate expectation of the petitioner cannot be denied on technical grounds by the respondent authorities. Viewed from any angle, the order impugned was passed without application of mind and the same is liable to be set aside.

36. In the result:

(a) the writ petition is allowed and the order of the first respondent letter Ref.No.80858/E2/4/06 dated 04.02.2008, is set aside;

(b) the respondent authorities are directed to consider the application of the petitioner and give him compassionate appointment, commensurate with his qualification, within a period of eight weeks from the date of receipt of a copy of this order. Consequently, M.P.No.2 of 2010 is closed. No costs.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

vs
To

1. The Secretary to the Government,
Department of Labour and Employment,
Secretariat, Chennai - 600 009.
2. The Director,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Dean,
Coimbatore Medical College Hospital,
Coimbatore - 641 018.

+1 CC to Mr.P. Saravanan, Advocate sr 1309

W.P.No.29476 of 2010 and
M.P.No.2 of 2010

SP(20/06/2018)