

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.31480 of 2016

G.Sudhakar

.. Petitioner

Vs

1.The Director General of Police,
Mylapore,
Chennai - 4.

2.The Commandant,
Tamil Nadu Special Police,
I-Battalion,
Tirchy - 2.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the second respondent in Na.Ka.No.D1/324/2013, dated 05.03.2013 confirming the earlies orders in Na.Ka.No.D1/2582/07, dated 23.06.2011 and quash the same and consequently direct the second respondent to forward the proposals as directed by the first respondent in Roc.No.38845/CA2/2013, dated 15.03.2013 for appointment of the petitioner in a suitable job on compassionate grounds.

For petitioner : Mr.S.Kamadevan

For Respondents : Mr.R.S.Selvam, GA

O R D E R

This writ petition is directed against the impugned proceedings dated 05.03.2013 passed by the second respondent / the Commandant, Tamil Nadu Special Police, Trichy, confirming the earlier order dated 23.06.2011 rejecting the request of the petitioner for appointment on compassionate ground on the ground that the petitioner has not submitted his application within a period of three years from the date of death of his father i.e. on 05.06.2001.

2. Learned counsel appearing for the petitioner, by referring to a communication dated 27.02.2003 of the Director General of Police, Chennai / first respondent herein, submitted that the petitioner had made application on 17.09.2002 itself, which is just 1 year 3 months from the date of death of his father, therefore, the respondent, having accepted the application dated 17.09.2002 of the petitioner seeking appointment on compassionate ground, has wrongly rejected the request of the petitioner as though the petitioner had made an application only on 16.06.2005. It is further contended that while passing the impugned order, neither the communication dated 27.02.2003 of the first respondent has been referred to nor the first application dated 17.09.2002 of the petitioner seeking appointment on compassionate ground has been referred by the respondent in the impugned order, therefore, the very premise on which the rejection has been made not only shows the non-application of mind, but also it is a deliberate omission of facts with regard to application made by the petitioner on 17.09.2002 itself.

3. It is further submitted that after the death of the breadwinner, both the wives of the deceased raised a claim for disbursal of retirement benefits, however, due to the counter claim of the second wife, there was a delay in settling the retirement benefits. Finally, the Accountant General (A&E), Chennai, vide his proceedings dated 06.05.2008, had returned the pension proposal stating that two wives shall be directed to settle their eligibility through Court of law, besides submitting the proof for performing marriage with the deceased along with the revised legal heir certificate if there is no dispute between them. Thereafter, both the wives have entered into a compromise agreement through a bond dated 07.07.2009 by settling the issue to the effect that the pensionary benefits shall be divided equally for both the wives and pension shall be paid to the 2nd wife Tmt.Sumathy and that compassionate appointment shall be given to the petitioner who is the son of the first wife. Subsequently, by accepting the compromise agreement, necessary authorization was also issued by the office of the Accountant General vide its proceedings dated 13.01.2010 for disbursal of the pensionary benefits. Thus, it is contended, when both the wives of the deceased have settled their issues with regard to pensionary benefits as well as appointment on compassionate ground, the respondent cannot take a different stand stating that the petitioner has made an application only after the prescribed period of three years from the date of death of his deceased father. Therefore,

he prayed for a direction to the respondents to accept the application made by the petitioner seeking appointment on compassionate ground.

4. Per contra, learned Government Advocate appearing for the respondents submitted that as per the provisions of law, a person, who is seeking an appointment on compassionate ground, has to submit his/her application within a period of three years from the date of death of the deceased. But, in the present case, from the impugned order passed by the second respondent, it is clear that the petitioner has made an application only after the period of three years from the date of death of his father, therefore, on this count, the second respondent has rightly rejected his application, hence, he prayed for dismissal of the writ petition.

5. But, this Court is unable to agree with the above said submission, for the reason that a communication dated 27.02.2003 of the Director General of Police, Chennai / first respondent herein clearly shows that the petitioner had made application on 17.09.2002 itself and in the said communication, the petitioner was directed to approach the competent authority / second respondent herein. Therefore, the impugned order passed by the second respondent stating that petitioner has made his application only after a period of three years cannot stand to legal scrutiny.

6. Another stand of the respondent that since there was a dispute between the two wives of the deceased, the respondents are not able to consider his request also cannot be sustainable, for, in the 3rd paragraph of the counter affidavit filed by the respondents, it has been clearly mentioned that the dispute between the two wives with regard to disbursement of retiral benefits as well as appointment on compassionate ground has been settled through the compromise agreement dated 07.07.2009, whereby they have authorised the second wife to receive the pension and it is also further stated that appointment on compassionate ground should be given to the son of the first wife / petitioner herein. The said compromise agreement was also authorized by the office of the Accountant General vide its proceedings dated 13.01.2010. Therefore, in view of such a mutual compromise agreement between the two wives of the deceased, the impugned order passed by the second respondent rejecting the request of the petitioner seeking appointment on compassionate ground is liable to be set aside and accordingly, the same is set aside.

7. In fine, the writ petition is allowed with a direction to the second respondent to consider the claim of the petitioner for appointment on compassionate ground within a period of six weeks from the date of receipt of a copy of this order. No Costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rkm

To

1.The Director General of Police,
Mylapore,
Chennai - 4.

2.The Commandant,
Tamil Nadu Special Police,
I-Battalion,
Tirchy - 2.

+1 CC to Mr.S.Kamadevan, Advocate Sr.No.2318

+1 CC to Government Pleader, High Court, Chennai Sr.No.2376

W.P.No.31480 of 2016

RR(CO)
KP(06/02/2018)

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