IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.10.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.24310 of 2017

T. Vidhya ...Petitioner

Vs

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Department of Revenue, Fort St. George
Chennai 600 009.

2.The Joint Commissioner (CommercialTax) office,
Chennai (Central) Division
Greams Road, Nungambakkam,
Chennai 600 006. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for entire records relating to proceedings No.3943/2017/A4 dated 18.08.2017 on the file of the 2nd Respondent and quash the same and consequently direct the respondents to consider the petitioners application dated 03.08.2017 for compassionate appointment and provide her a suitable job in accordance with law.

For Petitioner : Mr.N.S.Sivakumar

For Respondents : Mrs.S.T.Jayanthi
Special Government Pleader for R1

Mr.Master Ganesh
Government Advocate (Taxes) for R2

O R D E R

The order of rejection dated 18.08.2017, in respect of the claim of the writ petitioner for compassionate appointment is under challenge in this writ petition.

2. The learned counsel appearing for the petitioner made a submission that the husband of the writ petitioner late Mr.M.D.Vinodh Kannan was employed as Assistant in

Commercial Tax Department at Chennai and passed away on 04.11.2014. The marriage between the writ petitioner and the deceased employee was solemnized on 14.02.2011, as per the Hindu rites and custom. The husband of the writ petitioner was appointed in the Department of Commercial Tax only on 05.12.2012, after the marriage. However, on account of some differences of opinion between the couple, the husband of the writ petitioner filed a petition for divorce in H.M.O.P.No.104 of 2012 on the file of the Court of I Additional Subordinate Judge, Erode, on the ground of cruelty under Section 13 (1-a) of the Hindu Marriage Act, 1955. The petitioner contested the case and there is no issue from and out of the wedlock between the petitioner and the deceased employee. Unfortunately, the husband of the writ petitioner, while returning from Chennai to Tiruppur met with an accident and passed away on 04.01.2014 at the age of 30 years. Consequent to the death of the husband of the writ petitioner, the HMOP filed by him was dismissed on 21.01.2014. Accordingly, the marriage between the petitioner and her husband subsists as on the date of the application submitted by the writ petitioner seeking compassionate appointment.

3. The writ petitioner submitted an application seeking compassionate appointment on 03.08.2017. As per the impugned order, the said application was rejected by the respondents on the ground that the application was not submitted within a period of 3 years from the date of death of the deceased employee.

4. The learned counsel appearing for the petitioner states that the writ petitioner submitted an application seeking compassionate appointment on 23.01.2014, itself. The said application is enclosed in Page no.14 of the typed set of papers filed along with the present writ petition.

5. This Court has independently gone through the nature of the application submitted by the writ petitioner on 23.01.2014. The said application is not in a prescribed format. The said representation is a one paragraph representation, wherein, the writ petitioner has stated that the terminal and pensionary benefits and the compassionate appointment are to be provided to the writ petitioner. However, there is no proof to show that the application dated 23.01.2014 was submitted to the respondents. Not even the registered post receipt or acknowledgment is enclosed. In the absence of any such proof, such statutory applications for the purpose of securing public employment can never be trusted upon, by this Court for granting relief.

6. The application seeking compassionate appointment is an important document for the purpose of providing an appointment to the legal heirs of the deceased employee. Thus, the proof of such application is vital for the purpose of deciding the period of limitation stipulated in the terms and conditions of the scheme. Thus, a mere submission of the representation dated 23.01.2014 cannot be trusted upon for the purpose of granting the relief, on the ground that the writ petitioner has submitted an application within a period of three years from the date of death of the deceased employee.

7. The learned counsel appearing for the petitioner states that soon after the death of the husband of the writ petitioner, she was in the process of agitating the matter and in the process of getting legal heir certificate from the competent authority. On account of pendency of H.M.O.P, the petitioner was not in a position to get legal heir certificate immediately. Thus, there is a delay in submitting application seeking compassionate appointment.

8. This Court is of an opinion that scheme of compassionate appointment being the concession, the same cannot be extended by relaxing the terms and conditions stipulated in the scheme. The competent authority while considering the application seeking compassionate appointment is bound to follow the terms and conditions strictly and scrupulously. Scheme being a special one and concession cannot be extended by relaxing the terms and conditions. Such relaxation will infringe the right of all other candidates who are all aspiring to secure public employment under the constitutional scheme and by participating in the open competitive process.

9. This being the legal principles, this Court is of an opinion that even the delay attributed in submission of the application is a vital factor for the purpose of rejecting the claim and as such, there is no infirmity in the order passed by the respondents.

10. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
   Department of Revenue, Fort St. George
   Chennai 600 009.

2. The Joint Commissioner (Commercial Tax) office,
   Chennai (Central) Division
   Greams Road, Nungambakkam,
   Chennai 600 006.

+1cc to Mr.N.S.Sivakumar , Advocate SR.No. 74696
+1 CC TO GOVERNMENT PLEADER SR.NO. 75013

W.P.No.24310 of 2017

ASK(30/11/2018)