

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.28602 of 2017
and
W.M.P.No.30770 of 2017

1.The Union of India
rep. by General Manager,
Southern Railway,
Chennai.
2.The Senior Divisional Personnel
Officer, Southern Railway,
Tiruchirapalli. ... Petitioners

Vs

1.E.Gunasekaran
2.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the entire records of the second respondent Tribunal in O.A.No.310/01338 of 2015 and quash the order passed therein dated 21.06.2016.

For Petitioners .. Ms.A.Sri Jayanthi

For Respondents .. R2 - Tribunal

R1 - No appearance

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Heard the learned counsel appearing for the petitioners. The matter has been adjourned on numerous occasions for the appearance of the first respondent. Continuously, there is no representation on behalf of the first respondent and at least on the last three occasions. Therefore, we are proceeding with the matter on merit.

2.The first respondent's father was an employee of the petitioners. He died in harness on 22.02.1998. Admittedly, at the relevant point of time, the first respondent was a minor. It also appears that the first respondent and his mother were living separately at Sivaganga. The deceased was living with one Lilly. This was the statement made by the mother of the first respondent before the City Civil Court in a suit filed by her. However, the suit filed was decreed declaring the first respondent and his mother as the legal heirs of the deceased employee. The impugned order was passed by the petitioner on the ground that the first respondent and his mother were not dependents in terms of the admitted position as stated by them before the Civil Court.

3.In the meanwhile, the first respondent is said to have filed an application on 18.03.2011. According to the petitioners, the application was not received. However, another application was made on 08.10.2014 and on that, rejection order was passed. The Tribunal allowed the application on the ground that there is no dispute in view of the Civil Court decree that the first respondent and his mother were the legal heirs and the delay per se cannot be a ground to non-suit them. Challenging the same, the present writ petition has been filed.

4.We find considerable force in the submission of the learned counsel appearing for the petitioners. Appointment under the compassionate ground is not a matter of right. Merely because the first respondent is a legal heir, he is not entitled to be appointed on compassionate ground unless other parameters are satisfied. In the case on hand, it appears that the first respondent and his mother were living away from the deceased. Therefore, prima facie, we cannot say that they have lost the bread winner. However, this Court is not inclined to allow the writ petition on that ground.

5.Even according to the first respondent, application seeking appointment under compassionate ground was made on 18.03.2011. Admittedly, the deceased died on 22.02.1998. Almost

about 11 years have passed. The object of compassionate appointment is to tide over immediate financial constraint faced by the family due to the sudden death of an employee. Such a situation is not available in the case on hand. Thereafter, once again, the first respondent made another application on 08.10.2014 and only on this, the impugned order was passed. Therefore, we are of the view that delay is an important factor to be considered. There is absolutely no reason as to why the first respondent has not filed an application seeking compassionate appointment earlier.

6. In such view of the matter, we are not inclined to interfere with the order of the Tribunal. We hold so, as even in the year 1998, the first respondent must have been a major and therefore, there is no possible explanation for not making an application at that point of time. The question of time limit has to be seen from the point of view of consideration and not to be understood for making an application. Even assuming there is no time limit involved, such an application will have to be made within a reasonable time and not after a decade. Thus, the order of the Tribunal dated 21.06.2016 stands set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

mmi

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+1cc to Mr.A.Srijayanthi, Advocate SR.No.80729

W.P.No.28602 of 2017

SSI (CO)
GMY (27/12/2018)