



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 27.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
And

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P (MD) No.6157 of 2018

V.Ragul Kannan

... Petitioner

vs.

The Principal District Judge,
Trichy.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus calling for the records relating to R.No.4962/2015 dated 29.11.2017 passed by the respondent quash the same consequently direct the respondent to provide appointment to the petitioner based on his educational qualification within a time stipulated by this Court.

For Petitioner : Mr.A.Sivaji

For Respondent : Mr.D.Sivaraman

ORDER

(Order of the Court was made by T.RAJA, J.)

The pathetic case of the petitioner shows that his father late K.Vijayakumar, while serving as Junior Assistant in the District Munsif Court at Thuraiyur, Trichirappalli District, due to illness died on 26.08.2012, as early before the date, his mother late K.Vasanthakokila also pre-deceased on 02.03.2010, due to cancer and thereafter, the petitioner and his elder brother Mr.V.Nagarjuna were brought up by their maternal uncle Mr.T.Muthukumar and their grand mother. While residing along with them, after attaining majority, on 11.07.2016, the petitioner was advised to move an application for compassionate appointment, to avoid any technicalities. Accordingly, he moved an application for appointment on compassionate ground, on 25.04.2015 i.e. within three years from the date of his father's death. On receipt of such application, the respondent also on 15.10.2015 informed the petitioner that his application would be considered after he became major.

2.The petitioner also immediately after attaining the age of majority filed documents, required by the respondent on 05.08.2016. however, there is no order passed. After waiting for a long time, the petitioner was advised to file W.P.(MD)No.13821 of 2017 seeking



for a Mandamus to consider his claim for compassionate appointment. This Court, by order dated 26.07.2017 considering the limited prayer, gave a direction to the respondent therein to consider the petitioner's application dated 25.04.2015 within a period of eight weeks. But as against the positive reply given by the respondent on 15.10.2015 that his application would be considered, suddenly passed the impugned order dated 27.09.2018 negating his claim. It is may be for the reason that the petitioner has approached this Court for seeking direction.

3.Mr.A.Sivaji, learned counsel appearing for the petitioner assailing the impugned order, would submit that it is a well settled legal position that if a candidate, who is son or daughter, is minor and not attained the age of majority on the date of death of the bread winner, while in State or Central Service or Judicial service, after attaining majority within three years, if he makes an application seeking Compassionate appointment, in law, it is sufficient compliance of the requirement.

4.The learned counsel for the petitioner referred to the Judgment of this Court in J.JEBA MARY v. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD, reported in 2011 (3) LLN 405 (Mad), which in turn having referred to various Judgments of the Hon'ble Apex Court and High Courts, has held that when an application seeking compassionate appointment is made, the same cannot be rejected on the ground that the application was not submitted within three years from the date of death of the deceased employee, provided the candidate or father or mother of the candidate made an application within three years from the date of death of the deceased employee.

5.It is to be pointed out although the said application has been made after three years from the date of the death of the bread winner, this issue also has been vividly answered by various orders passed by this Court. In one such order, following the decision made in W.A.No.4008 of 2004, by the First Bench of this Court (consisting of the Hon'ble Mr.Justice Markandey Katju, C.J. (as he then was) and N.V.Balasubramanian,J.), passed in W.P.No.11601 of 2012, dated 22.11.2013, this Court has considered the said issue and the relevant portion thereof is extracted as under:-

"12.(a) Similar issue as to whether an application seeking compassionate appointment can be rejected on the ground that the application was not submitted within three years from the date of death of the deceased employee and whether completion of 18 years within three years, is a mandatory requirement when earlier application submitted by other claimant is kept pending, was considered by this Court in the decision reported in 2004 (3) CTC (T.Meer Ismail Ali v. The Tamil Nadu Electricity Board) (F.M.Ibrahim Kalifullah, J. (as he then was)). In the said case, the deceased board employee died on 13.04.1993 and the application submitted by one of his daughter on 05.08.1997 was rejected on the ground that she had not completed 18 years of age and after



completing 18 years of age when an application was made on 04.07.2000 which was rejected on the ground that the application was not made within three years from the date when the Board Proceedings dated 13.10.1995 was issued. This Court considering the technical plea raised by the respondent Board set aside the said order and remitted the matter to pass fresh orders without reference to the objections already raised by the Board. The said order of the learned single Judge was challenged by the TNEB in W.A.No.4008 of 2004 before the First Bench of this Court (consisting of the Hon'ble Mr. Justice Markandey Katju, C.J. (as he then was) and N.V. Balasubramanian, J.) dismissed the writ appeal on 01.12.2004. The respondents herein filed SLP No.6387 of 2005 against the said order which was also dismissed on 01.04.2005 by the Hon'ble Supreme Court and consequently the said writ petitioner was given compassionate appointment."

6. The learned single Judge also referring to various Division Bench Judgements passed in Writ appeals and writ petitions analysing the similar issue, again citing the decision of the Hon'ble Apex Court in MAHARAJ KRISHNAN BHATT v. STATE OF JAMMU AND KASHMIR, (2008) 9 SCC 24 has ultimately come to the conclusion that once a Judgement had attained finality on a particular/similar issue, it could not be termed as wrong and its benefit ought to be extended to other similarly placed persons.

7. Again while considering the similar and identical issue one of us (T.R., J.) also referring to the decision rendered by this Court in J. JEBA MARY v. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD (cited supra), which has been given on the basis of the decision of the Hon'ble Apex Court dated 30.03.2010 rendered in Civil Case Nos.5068-5069 of 2009, which is a direct answer to the issue involved herein, has held that if the applicant is a minor at the time of death of his father, he is ineligible to make an application seeking Compassionate Appointment, but however, if the mother of the applicant applied within time, i.e. within 3 years from the date of death of the breadwinner then the sufficient requirement to make an application seeking Compassionate Appointment shall be treated to be complied with.

8. Applying the above judgments and the law if the present case is seen, the petitioner's mother died on 02.03.2010. After two years, unfortunately, the petitioner's father late K. Vijayakumar while serving as Junior Assistant in District Munsif Court at Thuraiyur, Trichirappalli District also passed away on 26.08.2012. Thereafter, the petitioner and his elder brother were brought up by his maternal uncle Mr. T. Muthukumar and grand mother and an application was made on 25.04.2015 for Compassionate Appointment, which is within three years from the date of his father's death, more particularly, it may be noted that even though the petitioner has not attained majority, he has made an application for Compassionate Appointment. The respondent also issuing a



communication dated 15.10.2015 informed the petitioner that his application would be considered after he became major. Therefore, the petitioner was under the firm hope that the Principal District Munsif, Trichirappalli, the respondent herein would honour his own promise as indicated in his communication, dated 15.10.2015. But as against his own stand, he has rejected the petitioner's request for providing Compassionate Appointment taking U-turn. In the meanwhile, since the law is well settled, the respondent ought not to have driven the petitioner to approach this Court. Therefore, the impugned order is liable to be set aside, he pleaded and a direction be also issued to the respondent to provide Compassionate Appointment commensurate with his educational qualification.

9.The learned counsel for the respondent filed a detailed counter affidavit assailing the submission made by the petitioner, submitted that no doubt, the background of the petitioner's family deserves indulgence, but it is not known why the petitioner's elder brother Mr.V.Nagarjunan did not make any application, when his father died on 26.08.2012 , which shows that both the petitioner and his brothers were rightly brought up by their maternal uncle Mr.T.Muthukumar and grand mother. Therefore, there had been genuine indigenous circumstances prevailed on the date of death of the petitioner's father. The petitioner being a minor, his brother Mr.V.Nagarjunan could have made an application, which has not been done in this case.

10.Taking support from a Judgment of this Court in THE INSPECTOR GENERAL OF PRISONS v. P.MARIMUTHU, 2016 (5) CTC 125, the learned counsel for the respondent further submitted that a minor cannot move an application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. This Court has further held that the posts, which fall vacant have to be filled up as per the recruitment rules. Moreover, the employment assistance on Compassionate Appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the Employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

11.The learned counsel for the respondent further submitted that in the case of J.JEBA MARY v. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD (stated supra), after the death of the breadwinner on 02.08.1991, the applicants mother viz., the wife of the deceased employee made an application on 31.07.1992, that application was kept pending under consideration. Therefore, the subsequent application made by the candidate on 08.04.2005, which is beyond three years time from the date of death of the breadwinner was rejected on the ground that it was not submitted within three years from the date of death of the candidate's father.



considered. In the said case, the first application submitted by the applicant for Compassionate Appointment was rejected on the ground that she had not completed 18 years of age and the second application was also rejected on the ground that it was not made within three years from the date when the Board Proceedings dated 13.10.21995 was issued. This Court set aside the said order and remitted the matter to the respondent board for fresh consideration. The said order was challenged by the Tamil Nadu Electricity Board in W.A.No.4008 of 2004 and the same also dismissed. Against which, the respondent Board filed SLP No.6387 of 2005. The Hon'ble Apex Court also by order dated 01.04.2005 confirming the Judgement passed in W.A.No.4008 of 3004, directed the respondent Board to give Compassionate Appointment.

13.In the present case also after the death of late K.Vijayakumar, who served as Junior Assistant in District Munsif Court, Thuraiyur, Trichirappalli, died on 26.08.2012 and thereafter, within three years, an application was made seeking Compassionate Appointment for the petitioner on 25.04.2015. Immediately thereafter, the respondent also issued a communication to the petitioner on 15.10.2015, giving a consolation that the request of the petitioner would be considered for Compassionate Appointment after attaining the age of majority. Again finding no response, one more application has been made on 05.08.2016, which clearly shows that the petitioner made an application before he attained the age of majority and well within the time and the subsequent application dated 05.08.2016 clearly indicates that there is a continuous request made by the petitioner. However, a communication dated 15.10.2015 issued by the respondent indicating that his request for Compassionate Appointment would be considered cannot be unreasonably or arbitrarily withdrawn.

14.Moreover, the petitioner's mother pre-deceased on 02.03.2010. Subsequently, the petitioner's father also died on 26.08.2012. Now, the petitioner is an orphan. It is also an admitted case that after the death of both the parents, the petitioner and his elder brother were brought up by his maternal uncle and grand mother. Therefore, it is a deserved case, to set aside the impugned order.

15.Accordingly, in view of the peculiar facts and circumstances, the impugned order is set aside and this Writ Petition is allowed. The learned Principal District Judge, Trichirappalli, is directed to consider the case of the petitioner for appointing him in any one of the suitable posts commensurate to his educational qualification, viz., 12th standard. No costs.

Sd/-

Assistant Registrar(PROTOCOL)

/True Copy/



TO
THE PRINCIPAL DISTRICT JUDGE,
TIRUCHIRAPPALLI

+ 1 CC TO Mr.D.SIVARAMAN , ADVOCATE IN SR No.87984.

+ 1 CC TO Mr.A.SIVAJI , ADVOCATE IN SR No.87424.

RJ2

DS RSK SAR1 14 11 2018 6P 4C

Order made in
W.P (MD) No.6157 of 2018
27.09.2018