



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.08.2018

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.2453 of 2014

and M.P (MD) No.1 of 2014

K.S.Kathar Moideen

... Petitioner

-vs-

1.The Commissioner of Labour,
The Tamilnadu Labour Department,
Chennai - 06

2.The Deputy Commissioner of Labour,
The District Labour Department,
Tirunelveli.

3.The Deputy Commissioner of Labour,
The District Labour Department,
Coimbatore.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records passed by the respondent No.1 in G2/16291/2013, dated 29.05.2013, and quash the same and directing the respondents No.1 & 2 to appoint the petitioner on the basis of the compassionate ground.

For Petitioner	: Mr.S.M.A.Jinnah
For Respondents	: Mr.R.Sethuraman, Spl.Govt.Pleader

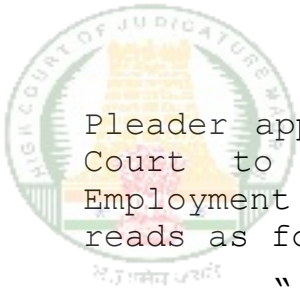
O R D E R

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for records passed by the 1st respondent in G2/16291/2013, dated 29.05.2013, and quash the same and consequently, direct the respondent Nos.1 and 2, to appoint the petitioner, on the basis of the compassionate ground.

2. The learned counsel appearing for the petitioner would submit that the petitioner's father was working as Junior Helper at the 3rd respondent's office and unfortunately he died on 05.04.1991 in his duty period. At the time of death of petitioner's father, the petitioner was minor, as his date of birth is 29.04.1986. The petitioner, after attaining the majority, made a representation to the 1st respondent for appointment on compassionate ground, who in turn, rejected the said request of the petitioner on the ground that the petitioner has not made any request for appointment on compassionate ground, within a period of three years from the date of death of his father.

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3. It is at this juncture, the learned Special Government



Pleader appearing for the respondents, drew the attention of this Court to the Government Order in G.O.(Ms)No.120, Labour and Employment Department, dated 26.06.1995. The operative portion reads as follows:-

“ ORDER :

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The Tamil Nadu Administrative Tribunal, Madras in its orders in O.A.No. 6554/93, dated 15.10.93 and in O.A. No. 5111/94, dated 17.10.94 had observed that the existing Government orders under the scheme of compassionate ground appointments may be reviewed and until such review appointment on compassionate ground may be suspended. Accordingly, the Government in the letter sixth read above, had issued instructions to all Heads of Departments to keep in abeyance all appointments and matter relating to compassionate ground appointments.

2. Simultaneously, the Government also reviewed the existing orders under the scheme. After careful review, the Government issue the following modifications to the Scheme.

1. The applications for appointment on compassionate grounds should be made within three years of the death of Government Servants;

2. The maximum age limit for such appointment be raised to 50 in the case of widows of the deceased Government Servants This order will take effect from the date of the issue of the order.

“

4. From the above, it is clear that the order will take effect from the date of issue of order and Government Order cannot be issued retrospectively, more particularly, when it is going to deprive the benefits that is already due to them. The petitioner has accrued the rights in terms of the earlier Government Order. The petitioner's request got to be considered, if an application is made within a period of three years from the date of attaining the majority and in this case, the petitioner has applied well in time at the age of 20.

5. This Court had an occasion to consider G.O.(Ms)No.120, Labour and Employment Department, dated 26.06.1995 and also G.O. (Ms)No.42, Labour and Employment Department, dated 12.03.2007 in W.P.(MD)No.1879 of 2014, dated 09.05.2017, in which it has been held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> 14. The learned Government Advocate was trying to justify the stand taken by the



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respondents, which culminated in the impugned order, by quoting the relevant portion in the counter filed by the fifth respondent, and further submitted that the cut off date given in G.O.Ms.No.120 Labour and Employment Department, dated 26.06.1995 was subsequently clarified and as per G.O.Ms.No.42 Labour and Employment Department, dated 12.03.2007, it shall be considered by strictly applying three years Rule. This argument advanced by the learned Government Advocate may not hold good for the simple reason that both the G.O.Ms.No.120 Labour and Employment dated 26.06.1995 as well as G.O.Ms.No.42 of the same Department dated 12.03.2007 were issued subsequent to the death of the Government Servant. In this case, as the Government servant was died on 23.09.1993 itself, this Court is of the view that import of the said G.Os by applying the three years Rule even in cases where the Government Servant died prior to the date of the G.Os cannot be put against the present case, especially, as against the petitioner, as he lost his father as early as in the year 1993 itself. Therefore, the arguments advanced on behalf of the respondents may not have much force and therefore, it is rejected."

15. In view of the reasons and discussions mentioned above, this Court is of the view that the impugned order is un-sustainable and also unjustifiable. Hence, the same is liable to be quashed and the writ petition is liable to be allowed.

16. In the result, the respondents are directed to take up the application of the petitioner dated 14.10.1999, and consider the same. If the original seniority assigned to the petitioner has already reached, appointment on compassionate ground immediately can be given to the petitioner. Otherwise, the request of the petitioner either can be considered for compassionate appointment, when he reaches his turn in the seniority list or it is also open to the respondents to forward the application to any other Government Department where vacancies are available to give compassionate appointment, in seniority, with the educational qualifications of the petitioner. This arrangement is possible to the respondents because, as per the procedure which are in vogue, if a particular department does not have a vacancy to give suitable job to the legal heirs of the deceased Government Servant on compassionate ground, the said



application can be forwarded for needful action to any other Government Department, where the vacancy is available readily. At any rate, the needful as has been directed above shall be undertaken by the respondents herein within a period of eight weeks from the date of receipt of a copy of this order."

6. It is seen that the petitioner's father expired on 05.04.1991 and therefore, the rejection based on the subsequent Government Order in G.O.(Ms)No.120, Labour and Employment Department, dated 26.06.1995, is not correct, as the said order has no retrospective effect.

7. It is settled that the application for compassionate appointment cannot be submitted, if a person already crossed 35 years. But, in this case, admittedly, the petitioner is only 32 years of age as on date and therefore, the request of the petitioner has to be favourably considered in accordance with law, provided the petitioner fulfils all other requirements in respect of educational qualification, etc, for the post to which he may be considered.

8. In the result, this Writ Petition stands allowed with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/

Assistant Registrar(Crl Side)

/True copy/

Sub Assistant Registrar(CS-I)

To:

- 1.The Commissioner of Labour,
The Tamilnadu Labour Department,
Chennai - 06
- 2.The Deputy Commissioner of Labour,
The District Labour Department,
Tirunelveli.
- 3.The Deputy Commissioner of Labour,
The District Labour Department,
Coimbatore.

+1cc to Mr.S.M.A.JINNAH, Advocate, SR.No. 80408

+1cc to M/s.Special Government Pleader,SR.No. 80761

W.P. (MD)No.2453 of 2014
27.08.2018

MPK/AR