



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.08.2018

CORAM :
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P. (MD) .No.273 of 2014
and
M.P. (MD) .No.1 of 2014

M.Senthil Kumar

...Petitioner

Vs.

1. The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.
2. The Municipal Corporation,
represented by its Commissioner,
Dindigul Municipal Corporation, Dindigul. ... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the impugned order of rejection passed by the second respondent in his proceedings in Na.Ka.No.5546/2011/E1 dated 28.07.2011 and quash the same as illegal and arbitrary and consequently direct the respondents to consider the petitioner's case for appointment in any suitable post based on the petitioner's qualification under compassionate ground within the time limit that may be fixed by this Court.

For Petitioner	: Mr.G.Thalaimutharasu
For R1	: Mr.R.Sethu Raman Special Government Pleader
For R2	: Mr.J.Lawrance

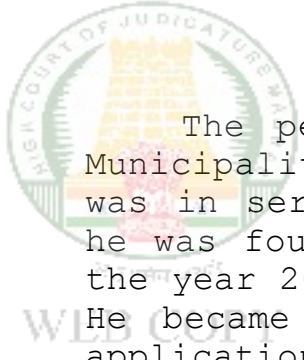
ORDER

This Writ Petition has been filed to quash the impugned order of rejection passed by the second respondent in his proceedings in Na.Ka.No.5546/2011/E1 dated 28.07.2011 and consequently to direct the respondents to consider the petitioner's case for appointment in any suitable post based on his qualification under compassionate ground.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The case of the petitioner is as follows:-



The petitioner was appointed as a Gang Mazdoor in Dindigul Municipality Corporation. The petitioner's father died while he was in service on 30.09.1992. The petitioner's father died when he was four years old. The petitioner had completed B.Com., in the year 2010. The date of birth of the petitioner is 30.11.1988. He became major in 2006. Only after five years, he made an application for compassionate appointment on 16.05.2011 to the second respondent. But the second respondent passed an impugned order of rejection vide his proceedings in Na.Ka.No.5546/2011/E1, dated 28.07.2011, by citing G.O.No.120 of Labour Department and stating that the petitioner did not make any application within three years when he attained majority, only after five years that is on 16.05.2011, he made an application for compassionate appointment. Aggrieved by the said order, the petitioner is before this Court.

4. According to the petitioner, the impugned order passed by the second respondent is totally non-application of mind. He further submits that the second respondent has failed to see that the petitioner has passed SSLC in the year 2002, at that time the petitioner was only 15 years old. Therefore, the learned counsel appearing for the petitioner would submit that, if the said application of the petitioner for compassionate appointment is directed to be considered by the second respondent on sympathetic grounds and an order to that effect is passed within the time fixed by this Court, the petitioner would be satisfied.

5. The learned counsel appearing for the respondents would submit that the petitioner has not made any application within three years from the date of attaining majority. Only after five years that is on 16.05.2011, he made an application for compassionate appointment.

6. This Court is of the view that the petitioner has challenged the impugned order of the year 2011 only in the year 2014 and that there is further delay of three years. Not only on the ground of laches, but also on merits, the petitioner has not made out a case for appointment on compassionate grounds and the same cannot be claimed as a matter of right.

7. At this juncture, it is relevant to point out paragraph No.20 of a decision reported in **(2011) 4 SCC 209, Bhawani Prasad Sonkar vs. Union of India and others**, wherein the Hon'ble Apex Court has held as follows:-

"20. Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:



or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de-hors the scheme.

WEB COPY (ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread-winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

8. This Court, while dealing with the scope of compassionate appointment in the case of **L.Mohanasundaram .vs. The Joint Director of School Education(Services), College Road, Nungambakkam, Chennai-6 and another made in W.P(MD)No.16402 of 2012, dated 03.1.2018** has categorically held that compassionate appointment cannot be claimed as a matter of right and in the event of applicability of rules, then the concerned person should apply for the same within the reasonable time.

9. There is no reason to interfere with the impugned order. In view of the above, I find no merit in the Writ Petition and accordingly, the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

<https://hcservices.ecourts.gov.in/hcservices/>

1. The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.



2. The Municipal Corporation,
represented by its Commissioner,
Dindigul Municipal Corporation, Dindigul.

+1cc to Mr.J.Lawrance, Advocate Sr.No.79740

+1cc to The Spl. Government Pleader Sr.No.79836

TSG

VB/SKN/SAR1/12.09.2018/4P/5C

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21.08.2018