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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.9394 of 2014

and

M.P (MD) No.1 of 2014

P.Subbulakshmi

... Petitioner

Vs.

1.The Conservator of Forest,
Tirunelveli Zone,
Tirunelveli -7

2.The District Forest Officer,
Tirunelveli District,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in O.Mu.No.Pal/8948/2012, dated 10.01.2013, on the file of the 2nd respondent and the consequential impugned order in Na.Ka.No.Pal/25/2013, dated 12.04.2013 on the file of the 1st respondent and quash the same and further directing the respondents to provide appointment to the petitioner's son in the Forest Department on compassionate grounds.

For Petitioner : Mr.G.Prabhu Rajadurai

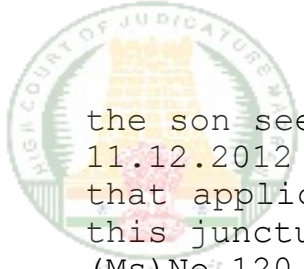
For Respondents : Mr.K.Mu.Muthu

Addl.Govt.Pleader

ORDER

The petitioner has come forward with this Writ Petition, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in O.Mu.No.Pal/8948/2012, dated 10.01.2013, on the file of the 2nd respondent and the consequential impugned order in Na.Ka.No.Pal/25/2013, dated 12.04.2013, on the file of the 1st respondent and quash the same and further directing the respondents to provide appointment to the petitioner's son in the Forest Department on compassionate grounds.

2. The petitioner is legally wedded wife of the deceased Pitchiah, who was working as Forest Guard and died on 09.07.1995. She sought for compassionate appointment to the son born to the 2nd wife of the deceased. Whether the second marriage is legal or not is not an issue on hand. The application was not rejected and it was kept pending. In the meanwhile, an application was made by



the son seeking employment on compassionate ground on 31.12.2012 and 11.12.2012 and both the applications were rejected on the ground that applications were made after a period of 13 years. It is at this juncture, it is relevant to refer the Government Order in G.O. (Ms)No.120, Labour and Employment Department, dated 26.06.1995. The operative portion reads as follows:-

ORDER :

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. "

3. As the earlier application was not rejected, the subsequent application has not been taken into account as a continuance one in view of the Division Bench Judgment of this Court in Selvi R.Anbarasi Vs. Chief Engineer (Personnel), TNEB, Chennai reported in (2006 (2) MLJ 200), wherein it has been held as follows:-

"The learned counsel for the petitioner submitted that a similar issue, rejecting the compassionate ground appointment on the ground that the application was submitted beyond three years and the same was rejected earlier on the ground that the petitioner therein has not completed 18 years of age, was considered by this Court in W.P.No.1584 of 2011 and this Court held that the applications having been made within a period of three years and the same having not been considered on the ground that the petitioner therein was not 18 years of age at that time, the subsequent application cannot be



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rejected on the ground that the application was submitted within three years. The learned Judge directed the respondents not to treat the second application as an application for compassionate appointment, but it is to be treated as continuation of the application originally submitted. The said judgment is reported in T.Meer Ismail Ali Vs. Tamil Nadu Electricity Board through its Chairman, and others, (2004) 3 C.T.C. 120. This Court, ultimately, directed the respondents to give compassionate appointment to the petitioner therein."

4. In terms of the said Government Order, the petitioner will have to satisfy all the conditions to get compassionate appointment. On the date of application the petitioner should be a major and he should have completed 8th standard. If the petitioner has fulfilled the conditions stipulated in the said G.O., the request of the petitioner has got to be considered. The rejection on the ground that there is a delay of 17 years in making application will not be correct, as the application has been made as early as on 30.04.1996 and there was a communication on 17.03.2003, after a period of seven years with regard to consideration of compassionate appointment. The case of the petitioner will have to be considered, based on his qualification and age, as on the date of original application. As already extracted supra, the respondent cannot treat the second application, as an application for compassionate appointment, but it should be treated as continuance of application originally submitted. Hence, the application given subsequently has to be treated as continuance of earlier one, but, the conditions as on the date of original application has got to be fulfilled. The respondents are directed to take into account the other circumstances, and if the petitioner is fulfilled, the request of the petitioner may be considered within a period of two months from the date of receipt of a copy of this order.

5. With the above direction, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Cr1.side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

1.The Conservator of Forest,
Tirunelveli Zone,
Tirunelveli -7

<https://hcservices.ecourt.gov.in/hcservices/>
2.The District Forest Officer,
Tirunelveli District,
Tirunelveli.



+1CC to Mr.G.Prabhu Rajadurai, Advocate, SR.No.81147
+1CC to the Special Government Pleader SR.No. 81310

W.P. (MD) No.9394 of 2014
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MPK

ES/RP/SAR 4/13.11.2018/4P/5C