



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20510 of 2017

&

WMP(MD)Nos.16794 and 16795 of 2017

Anandabagavathy

... Petitioner

Vs.

1.The Principal Secretary,
P.W.D. Secretariat,
Chennai - 600 009.

2.The Engineer in Chief,
Water Resources Organization and
Chief Engineer(General), PWD,
Chepauk, Chennai - 05.

... Respondents

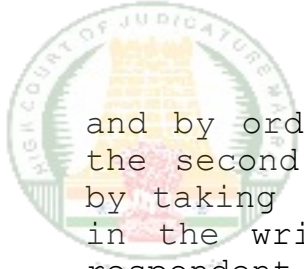
Prayer : This writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus. To call for the records pertaining to the impugned order passed by the Respondent No.2 in Letter No.S 3(4)/74556/2013 dated 21.06.2017 and quash the same and consequently direct the respondent No.2 to provide suitable employment to the petitioner under compassionate ground in the light of the order passed by this Court in W.A.(MD) No.859 of 2011 dated 20.04.2017.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.K.Saravanan, G.A

O R D E R

The petitioner's father was employed in the second respondent department. He passed away on 12.05.1999 while in service. The petitioner's mother submitted an application on 31.08.1999 seeking appointment on compassionate grounds. She later submitted another application on 12.12.2002. The request made by the petitioner's mother was not processed. In the meanwhile, the petitioner attained majority during 2007. Thereafter on 24.01.2008, the petitioner submitted a representation to the respondents requesting appointment on compassionate grounds. Since the said request was also not considered, she filed W.P.(MD) No.7639 of 2011 for issuance of a writ of mandamus. The said writ petition was dismissed on the ground that no case was made out for issuance of a writ of mandamus. Aggrieved by the same, the petitioner filed W.A.(MD) No.859 of 2011



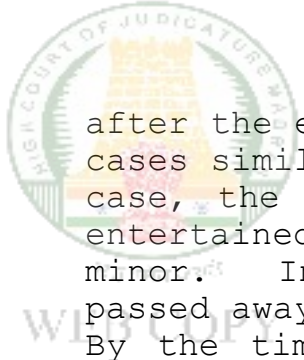
and by order dated 04.04.2017, the Hon'ble Division Bench directed the second respondent to consider the application dated 24.01.2008 by taking into consideration the facts set out in the order passed in the writ appeal. Pursuant to the said direction, the second respondent herein passed the impugned communication dated 21.06.2017 informing the petitioner that her request for appointment on compassionate ground cannot be considered. The same is assailed in this writ petition.

2.The learned counsel appearing for the writ petitioner submitted that the impugned order of rejection is not only arbitrary, but also betrays non application of mind, inasmuch as it has not taken note of the earlier order passed by the Hon'ble Division Bench on 04.04.2017 in W.A.(MD) No.859 of 2011.

3.This Court is unable to accept the said submission. No doubt the writ appeal filed by the petitioner herein was allowed by the Hon'ble Division Bench. It is also true that quite a few observations in favour of the petitioner herein were made therein. But, while directing the second respondent to consider the petitioner's application dated 24.01.2008 by taking into consideration the facts set out in the writ appeal order, it was also directed that the authority shall pass orders on merits and in accordance with law.

4.The expression "on merits and in accordance with law" cannot obviously be lost sight of. The authority can never be called upon to pass any order contrary to law. The second respondent while rejecting the petitioner's request had only placed reliance on G.O.Ms.No. 86, Labour and Employment Department dated 04.05.2010, G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 and the Government letter No.202, Labour and Employment Department dated 08.10.2007. The petitioner's father passed away in 1999. No doubt, the writ petitioner's mother submitted an application within a period of three years. It is admitted by the petitioner herself in her letter dated 17.06.2011 that the writ petitioner's mother had already withdrawn her application for appointment on compassionate ground due to her ill health and instead requested the respondents to provide a job for the petitioner.

5.As held by the Hon'ble supreme Court in the decision reported in (2000) 7 SCC 192 - (Sanjay Kumar Vs. State of Bihar), there cannot be a reservation of a vacancy till such time as the legal heir of the deceased government employee attains majority. In G.Ramesh Kumar Vs. TNEB (W.P.No.31627 of 2014 dated 27.11.2017), a learned Judge of this Court (His Lordship S.M.SUBRAMANIAN, J.), has comprehensively expounded the law relating to appointment on compassionate grounds. After referring to various decisions of the Hon'ble Supreme Court as well as the decision of the Hon'ble Division Bench reported in 2016(5) CTC 125 - The Inspector General of Prisons, Trichirappalli District Vs. P.Marimuthu, the learned Judge observed that compassionate appointment cannot be granted



after the expiry of a reasonable period. In the aforesaid decision, cases similar to the one on hand have also been referred to. In one case, the request for appointment on compassionate ground was not entertained because on the date of application, the applicant was a minor. In the present case also, the writ petitioner's father passed away in the year 1999. The writ petitioner was a minor then. By the time, she submitted an independent application, more than nine years had lapsed. Granting appointment on compassionate grounds after a lapse of 19 years from the date of death of the employment cannot be said to be proper.

6. It is also well settled that no positive direction can be given to the department to appoint any candidate on compassionate grounds. This is because in every department there is a list of eligible candidates and merely because a person approaches the Court one cannot permit jumping the queue. Compassionate appointment cannot be treated as one more source of recruitment. The writ petitioner has not made out a case for interference. The order impugned in this writ petition is sustained.

7. This writ petition is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
P.W.D. Secretariat,
Chennai - 600 009.

2. The Engineer in Chief,
Water Resources Organization and
Chief Engineer (General), PWD,
Chepauk, Chennai - 05.

+1CC to the Special Government Pleader SR.No.42844

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