

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.11.2019
CORAM

THE HONOURABLE Mr. JUSTICE D. KRISHNAKUMAR

W.P.No.1020 of 2015

N. Jayalakshmi

... Petitioner

Vs.

1.The District Collector,
Thiruvallur District,
Thiruvallur.

2.The Block Development Officer,
Kadambathur Panchayat Union,
Thiruvallur District.

... Respondents

PRAYER: Petition filed Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 26.12.2014 within a stipulated period.

For Petitioner : Mr.K. Govi Ganesan

For Respondents : Mr. J. Pothiraj,
Special Government Pleader

ORDER

The Writ Petitioner husband N.Subramaniam was selected and appointed to the post of Road Inspector on temporary basis and joined duty on 11.10.1972 and his service was regularized with effect from 01.01.1978. The Petitioner's deceased husband died due to harness leaving behind the Writ Petitioner, Son Kumar and Daughters Banu Priya and Saveetha as his legal heirs.

2.On 01.08.2008, the petitioner has submitted her application with a request to the 1st respondent to provide appointment on compassionate ground. But, the 1st respondent has not considered the said application. Hence, the Writ Petitioner had made a request to the respondents on 26.12.2014 to consider the petitioner's elder daughter Banu Priya for compassionate appointment instead of the Writ Petitioner. The said representation was received by the respondents on 27.12.2014 and orders have been passed and thereafter, this Writ Petition has been filed for the abovesaid prayer.

3.The 1st respondent has filed their counter affidavit stating that as per G.O.Ms.No.96, Labour and Employment (Q1) Department, dated 18.06.2012, if the female legal heir of the deceased Government servant seeking employment under Compassionate ground submitted application before 29.11.2001 and got married after 29.11.2001 are eligible for employment under compassionate ground. But, as per the legal heir certificate issued by the Department dated 24.08.2006, the marital status of the petitioner's daughter at the time of death of Government servant was married and hence, she is not eligible for appointment under the compassionate ground. She further submitted that the aforesaid deceased employee N.Subramaniam expired on 21.07.2006 and the petitioner herein has submitted her application on 06.04.2009 for employment under compassionate ground before the Commissioner of Panchayat Union, Kadambattur. The said application was forwarded by the District Collector on 28.04.2009.

4.On scrutiny of the said application, the Writ Petitioner did not possess the required qualifications and no proof was produced regarding educational qualifications along with the application under compassionate ground on 06.04.2009. Further, no documentary evidence was filed for proof of age and as per the Transfer Certificate, it is found that the petitioner was detained in V STD and her date of birth is 01.06.1960. Therefore, as per the Tamil Nadu Basic Servant Rules, no person shall be eligible for appointment by direct recruitment to any category of the service in Class I, II, and III unless he has passed the III form or the VIII STD of the recognized school. But, the petitioner has studied only IV STD and therefore, the petitioner is not eligible to the post of Office Assistant which is the last grade Government servant post.

5.Heard the learned counsel appearing on either side and perused the material available on record.

6.It is seen that the application has been submitted on 01.08.2008 to the respondents to provide an employment under the compassionate ground. In the counter affidavit, it is stated that the application was submitted by the petitioner on 06.04.2009 to the Commissioner of Panchayat Union, Kadambattur and the said application was forwarded to the District Collector, Thiruvallur and thereafter, it was rejected on the ground that the petitioner is not eligible even to the post of last grade Government servant. Thereafter only, the petitioner has made an application to the respondents on 26.12.2014 to consider the petitioner's elder daughter Banu Priya for compassionate appointment instead of the Writ Petitioner.

Firstly, the application submitted by the Writ Petitioner on 06.04.2009 was found not eligible for appointment under the compassionate ground. Secondly, the second application submitted by the Writ Petitioner on 26.12.2014 which is beyond the three years period from the date of the death of the deceased employee. Therefore, the application to the Authority has not been submitted within a period of three years. Further, as per G.O.Ms.No.96, Labour and Employment (Q1) Department, dated 18.06.2012, the Writ Petitioner was married at the time of submitting the application.

7.It is seen that as per G.O.Ms.No.96, Labour and Employment (Q1) Department, dated 18.06.2012, if the female legal heir of the deceased Government servant seeking employment under Compassionate ground submitted application before 29.11.2001 and got married after 29.11.2001 are eligible for employment under compassionate ground. But, as per the legal heir certificate issued by the Department dated 24.08.2006, the marital status of the petitioner's daughter at the time of death of Government servant was, 'married' and hence, she is not eligible for appointment under the compassionate ground.

8.This Court, in W.P.(MD).No.11331 of 2016, dated 05.08.2019, has elaborately considered the scope of appointment under compassionate ground which needs as follows:

"8.The application submitted by the petitioner before the respondents is for seeking appointment on compassionate ground. The Government had taken a decision for appointment under compassionate ground is a concession. The scheme, being a concession, can never be claimed as a matter of right and the employers have to provide employment, within the reasonable period of three years or five years. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. Further, the petitioner is debarred from seeking compassionate appointment on the ground of delay as well as in the light of the decision rendered by the Hon'ble Supreme Court in the case of State of Himachal Pradesh and another V. Shashi Kumar reported in (2019) 3 Supreme Court Cases 652. The relevant paragraphs of the said decision read as under:

"35.Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ

Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including State of J & K Vs. Sajad Ahmed Mir and Local Administration Department Vs. M. Selvanayagam.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place."

9. Further, the Writ Petitioner has approached this Court with the delay of more than seven years. In the light of the abovesaid Judgment of the Hon'ble Supreme Court, the Writ

Petitioner cannot have legal right to claim appointment under the compassionate ground. Therefore, this Court has no hesitation to reject the claim of the Writ Petitioner.

Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

mps

To

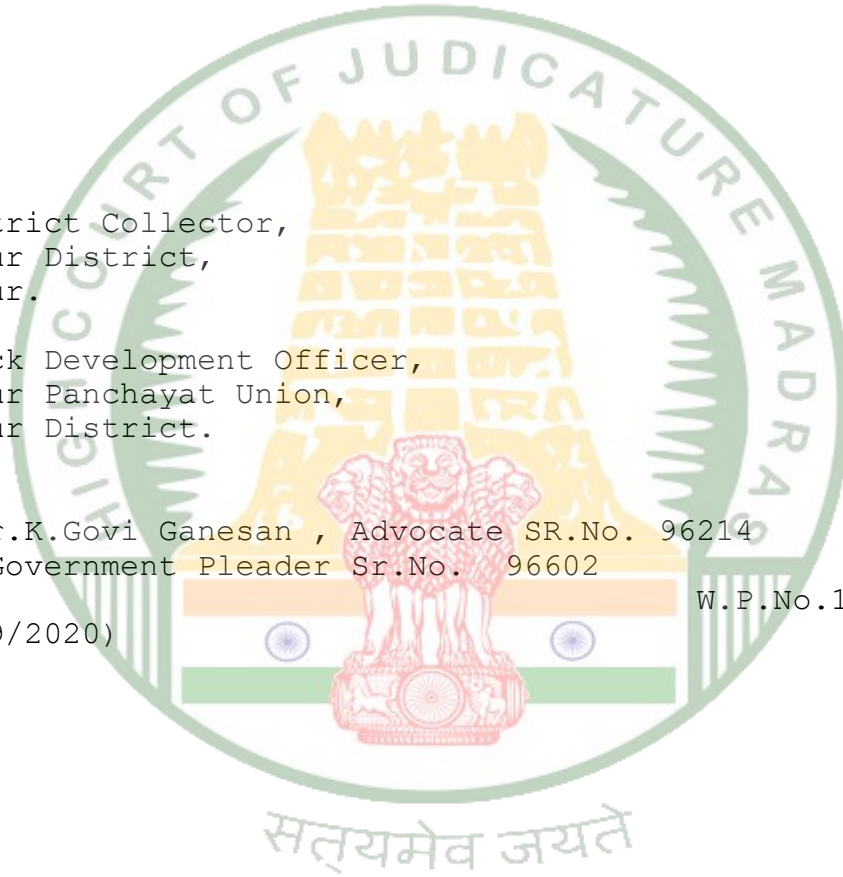
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2.The Block Development Officer,
Kadambathur Panchayat Union,
Thiruvallur District.

+1cc to Mr.K.Govi Ganesan , Advocate SR.No. 96214
+1 cc to Government Pleader Sr.No. 96602

A.SK(10/09/2020)

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