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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2019

Pronounced on : 16.05.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.2272 of 2019

and

W.M.P.Nos.2514 & 2516 of 2019

1.S.Selvamani

2.Vindhya Mary

... Petitioners

Vs

1.The Additional Chief Secretary
to Government,
Home Police Department,
Fort St. George,
Chennai-600 009.

2.The Deputy General of Police,
(Law & Order),
Chennai-4.

3.The Commissioner of Police,
Greater Chennai Police,
Vepery,
Chennai.

4.The Additional Commissioner Traffic Region,
Greater Chennai Police,
Vepery,
Chennai-7.

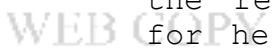
5.The Inspector of Police,
J1, Police Station,
Saidapet, Chennai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the fourth respondent in proceeding Na.Ka.Pa.Pi.3/Po/1037/11912/2015 dated 26.07.2018 and to quash the same and consequently direct the respondents to appoint the second petitioner in any suitable post on compassionate grounds.

For Petitioner : Ms.Swadhi Subramaniam

For Respondents : Mrs.K.Bhuvaneswari, AGP



ORDER

The order under challenge in the present Writ Petition is to the rejection of the second petitioner's application, seeking for her compassionate appointment on the death of her father, who was an erstwhile employee in the Tamil Nadu Police Department.

2. Heard Ms.Swathi Subramaniam, learned counsel for the petitioner and Mrs.K.Bhuvaneswari, learned counsel appearing on behalf of the respondents.

3. The brief facts of the case is as follows:

i) While the first petitioner is the wife of one Susairaj, who was employed as a Writer in J1 Traffic Police Station, Saidapet, Chennai, the second petitioner is his daughter. The said Susairaj died in service on 22.08.2005. At the time of his death, he was survived by the first petitioner herein and two minor daughters, who were aged about 5 and 2 years respectively.

ii) On 28.01.2006, the first petitioner herein had made an application to the Commissioner of Police, Greater Chennai Police, Vepery, Chennai, seeking for compassionate appointment. The said application was duly received and forwarded through the Inspector of Police, Saidapet Traffic Range, Chennai. Since there was no further action on her application, she gave a representation to the Hon'ble Deputy Chief Minister for compassionate appointment. The said representation dated 30.10.2009 was forwarded to the Additional Commissioner of Police, who in turn, rejected the same on 08.01.2010 on the ground that the first petitioner's representation dated 30.10.2009 is beyond the period of three years from the date of death of the employee and in view of G.O.Ms.120, Labour and Employment dated 26.06.1995, the application is belated. Pursuant to that, the first petitioner had been making various representations to the respondents as well as to the Chief Minister's Special Cell which were not considered.

iii) Since the first petitioner's application for compassionate appointment dated 28.01.2006 was kept pending for more than 12 years, on 27.04.2015, the first petitioner had sent a representation to the Commissioner of Police, Greater Chennai Police, Vepery, Chennai, seeking to order compassionate appointment in favour of her first daughter, who is the second petitioner herein. In continuation of the first petitioner's request dated 27.04.2015, the second petitioner also made a request on 04.05.2018 to the Commissioner of Police, Chennai,



seeking for compassionate appointment. By an order dated 26.07.2018, the fourth respondent herein had rejected the second petitioner's request on the ground that it was belatedly made after three years from the date of death of A.Susairaj. Challenging the same, the present Writ Petition has been filed.

4. Ms.Swathi Subramaniam, learned counsel for the petitioner submitted that the original application for compassionate appointment was made by the first petitioner on 28.01.2006 itself, which is within 3 years from the date of the death of the employee. Since the application was not considered for more than 10 years and the first petitioner, in the meantime, had developed medical ailments, she had made a request for granting the compassionate appointment in favour of the second petitioner herein, who had already attained majority. According to the learned counsel, the fourth respondent herein is not justified in rejecting the application on the ground of delay since the original application itself was made in time.

5. The learned Additional Government Pleader, on the other hand submitted that, when the first petitioner had originally given a representation on 30.10.2009, the fourth respondent had rejected it on 08.01.2010 itself stating that the representation was made after a period of three years from the date of death of the employee. Since the first petitioner has not challenged the rejection order dated 08.01.2010, the present Writ Petition is not maintainable. The learned Additional Government Pleader also submitted that the second petitioner herein is now making application for the first time on 04.05.2018, which is after 13 years from the date of death of the employee. Hence, the learned Additional Government Pleader submitted that there was no illegality in the impugned order dated 26.07.2018 passed by the fourth respondent herein.

6. I have given careful consideration to the submissions made by the respective counsels.

7. It is not in dispute that the first petitioner's husband namely, Susairaj was employed as a Writer in J1 Traffic Police Station, Saidapet, Chennai and had died, while in service on 22.08.2005. The original application made by the first petitioner on 28.01.2006, seeking for compassionate appointment for herself is also not disputed. As a matter of fact, the acknowledgement of the application dated 28.01.2006 is also produced before this Court. Since the original application dated 28.01.2006 was not processed in time, the first petitioner had given a follow-up representation on 30.10.2009 to the Hon'ble Deputy Chief Minister of Tamil Nadu. In the said representation dated 30.10.2009, the first petitioner had clearly referred to her original application dated 28.01.2006



and sought for compassionate appointment, based only on her original application dated 28.01.2006. Curiously, the fourth respondent herein had construed the petitioner's representation dated 30.10.2009 as the application for compassionate appointment, without reference to her original application dated 28.01.2006 which has been duly acknowledged by the respondents. In fact, the rejection order dated 08.01.2010 itself is a clear case of non application of mind since the representation is for a request for further action on her original application dated 28.01.2006.

8. After the rejection order of the fourth respondent dated 08.01.2010, the first petitioner has been making innumerable representations to the authorities as well as to the Hon'ble Chief Minister's Special Cell, the copies of which are produced before this Court. After a struggle of more than 9 years, the first petitioner had made a request to the respondents to extend the compassionate appointment in favour of her first daughter/the second petitioner herein, who had attended majority by then. The fourth respondent had chosen to reject this representation through an impugned order dated 26.07.2018 on the ground that it was belatedly made after a period of 3 years and that the first petitioner's application was already rejected earlier.

9. In identical circumstances, the Hon'ble Apex Court in a decision in the case of Syed Khadim Hussain V. State of Bihar and others reported in 2006 (9) SCC 195, had directed the concerned authorities to consider the application for compassionate appointment. In the said case before the Hon'ble Supreme Court, the widow of the deceased employee had made an application for compassionate appointment in the year 1993 which was within time. The application was rejected on the ground that it was not in the prescribed proforma. The applicant's child was a minor, who also made an application in the year 1995 and the same was rejected on the ground that he was a minor. The rejection was challenged upto the Hon'ble Supreme Court, wherein, it was held that though the original rejection of the widow's application was not challenged and the subsequent application was filed much later, it was held that the rejection was made without assigning any reasons and since the child could not have made the application during his minority, directed the authorities to provide compassionate appointment. The observations made therein reads as follows:-

"5. We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the



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application, he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.

6.As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The appeal is disposed of in the above terms. No costs."

10. Like the facts involved in the above case before the Hon'ble Supreme Court, the facts of the present case is also similar in nature. When the first petitioner's representation came to be rejected on 08.01.2010 on the ground that it was made after 3 years, the respondents were under the impression that the representation dated 30.10.2009 itself is an application for compassionate appointment owing to the death of the employee on 22.08.2005. Whereas the fact remains that the application was made within time on 28.01.2006 itself, which is about 4 months and 22 days from the death of the employee. The representation dated 30.10.2009 was only a reminder to the earlier application dated 28.01.2006, which was pending before the respondents. Without any application of mind, the first petitioner's request for compassionate appointment came to be rejected. As observed by the Hon'ble Apex Court in the aforesaid decision, in matters of compassionate appointments, the authorities should extend the services in an effective manner, so that the eligible candidate may avail the opportunity. While the facts involved in the case



before the Hon'ble Supreme Court was a non speaking order of rejection, the facts in the present case is also a non application of mind while rejecting. Such an order can only be termed to be non est in the eye of law and no credential could be given to such a thoughtless and insensitive order. Hence, it can only be construed that the original application dated 28.01.2006 before the respondents by the first petitioner, seeking for compassionate appointment was still pending before the respondents. As such, when the first petitioner had sought for extending the compassionate appointment in favour of her daughter who had attained majority, she was fully justified in making such a request and the reasons assigned by the first petitioner that she had developed medical ailments over the period of 10 years and was not in a position to take any employment, seems acceptable and deserves consideration.

11. In view of the fact that the original rejection order of the fourth respondent dated 08.01.2010 is illegal and non est in the eye of law and the original application dated 28.01.2006 was admittedly made in time, there is no justification on the part of the fourth respondent in having rejected the petitioners' request.

12. It would not be out of place to mention here that when the officials attached to the respondents department have been inactive and kept the first petitioner's application dated 28.01.2006 in cold storage for more than 3 years, the same would amount to dereliction of duties of the concerned officers, which requires to be viewed as a serious misconduct. Moreover, when they had passed adverse orders against the first petitioner's genuine and legal request, in view of their negligence and inaction in passing appropriate orders in time, this Court is quite disheartened by the careless manner in which the respondents had handled the rightful claim made by the widow of the deceased employee. The authorities ought to have looked into the plea made by the widow stating that when her husband died, she was left helpless with two minor girl children, aged about 5 and 2 years, without the support of her parents or in-laws. The application was made when she was destitute and since then, she had been knocking the doors of the respondents, only to be slapped with a meaningless and illegal rejection order. Though such a situation deserves for a direction to be issued by this Court to initiate disciplinary action on the erring officials, this Court is consciously refraining itself from doing so, in order to avoid any further delay in the appointment.

13. From all the foregoing reasons, the impugned order dated 26.07.2018 passed by the fourth respondent is hereby quashed. Consequently, the third respondent herein is directed to issue an appointment order on compassionate ground to the second



petitioner herein to such post which would commensurate with her eligibility, at least within period of 8 weeks from the date of receipt of a copy of this order.

14. With the above observation and direction, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Additional Chief Secretary to Government,
Home Police Department,
Fort St. George,
Chennai-600 009.

2.The Deputy General of Police,
(Law & Order), Chennai-4.

3.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

4.The Additional Commissioner Traffic Region,
Greater Chennai Police,
Vepery, Chennai-7.

5.The Inspector of Police,
J1, Police Station,
Saidapet, Chennai.

+1 cc to Mr.R.Prem Narayan, Advocate Sr.No.44053

Order made in

W.P.No.2272 of 2019
and W.M.P.Nos.2514 & 2516 of 2019

CSL/11.07.2019