

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. No.37152 of 2006

R.Kasthuri

... Petitioner

Vs.

The Superintendent of Police,
CBCID,
Chennai -4.

...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari cum Mandamus to call for the records in connected with the proceedings issued in Ka.No.Th.PI-Pani 2 (1)/527-36305/-1 dated 12.04.2005 passed by the respondent and quash the same and consequently direct the respondent to appoint the petitioner's daughter on compassionate ground.

For Petitioner : Mr.S.Ilamvaludhi
For Respondent : Mr.K.S.Suresh,
Government Advocate.

O R D E R

This Writ Petition has been filed for a Writ of Certiorari cum Mandamus to quash the proceedings in Ka.No.Th.PI - Pani 2 (1)/527-36305/-1 dated 12.04.2005 (the Impugned Order) and, consequently, direct the Respondent to appoint the Petitioner's daughter on compassionate grounds.

2. The relevant facts are that the Petitioner's husband, Mr. M.V.Ramakrishnan, died on 29.09.1992 while he was in service as Inspector of Police. After the demise of her husband, the Petitioner obtained a Certificate dated 24.06.1999 from the Tahsildar, Polur, to the effect that the Petitioner has no income except a house valued at Rs. 1 lakh. The Petitioner also obtained a Legal Heirship Certificate dated 12.07.1999 specifying the names of the Petitioner and her daughter as the legal heirs of the deceased, namely, Mr.Ramakrishnan. Thereafter, the Petitioner applied for compassionate appointment for her daughter on 15.12.1999. The Petitioner also obtained a Certificate dated 16.02.2005 from the

Tahsildar, Polur, stating that the income of the family is a sum of Rs.3,711/- per month as family pension, which aggregates to Rs.44,532/- per year, and that the family is subsisting on this allowance. In addition, the said Certificate states that the Petitioner's daughter is married to Mr.Paneerselvam, who is a farmer with an annual income of Rs.9900/-. Thereafter, the Petitioner states that she received a communication from the Superintendent, CBCID on 12.04.2005 stating that the daughter married on 07.03.2003 and that there is no provision in the Rules to appoint the Petitioner's married daughter on compassionate basis. According to the Petitioner, her daughter was unmarried on the date of application and, in any event, the rule that disqualifies a married daughter is discriminatory.

3. The learned counsel for the Petitioner submits that at the time of death of her husband, her daughter was aged about 11 years. The learned counsel also pointed out that the marriage of the Petitioner's daughter took place much after the death of the Petitioner's husband and about four years after the submission of the application for compassionate appointment.

4. In order to substantiate the fact that the daughter is in indigent circumstances, the learned counsel referred to the Certificate dated 16.02.2005 of the Tahsildar, Polur, wherein it is stated that the Petitioner is receiving a family pension of Rs.3,711/- per month (Rs.44,532/- per year) and the Petitioner's son-in-law's (daughter's husband) income is Rs.9,900/- per year.

5. Accordingly, it is the submission of the learned counsel for the Petitioner that the Petitioner's daughter is in indigent circumstances and, therefore, she is qualified for compassionate appointment.

6. He further submits that the Impugned Order was issued entirely on the basis that an unmarried daughter cannot be appointed as per the rules of the Respondent and that this is discriminatory. In this regard, he referred to the judgment of the Division Bench of this Court in 2016 3 MLJ "Director of School Education and another Vs Chitrakleha" wherein, the Division Bench of this Court dismissed the appeal filed against the order appointing the married daughter, who was unmarried at the time of making the application for compassionate appointment.

7. In response, the learned counsel for the Respondent submitted that the application for compassionate appointment was first submitted on 15.12.1999 and that, as per applicable rules, compassionate appointment cannot be considered after the lapse of three years. In addition, he submitted that the rules do not permit the appointment of a married daughter on compassionate basis.

8. The affidavit, documents and oral submissions were carefully considered.

9. It is an admitted fact that the petitioner's husband died on 29.09.1992 while in service. It is also admitted that the first application for compassionate appointment was made on 15.12.1999, i.e. after the lapse of seven years. In this factual context, it is relevant to state that it is well settled that compassionate appointment is not a mode of recruitment but a means for providing immediate succour to the family of the deceased, who died in service, provided the family is in indigent circumstances. In other words, the object and purpose is to enable the family in distress to deal with the crisis that follows immediately after the death.

10. In similar circumstances, the Hon'ble Supreme Court in *Dhalla Ram vs. Union of India*, (1997) 11 SCC 201 held that an application filed before the Central Administrative Tribunal after a delay of 5 years cannot be entertained because compassionate appointment is not a method of recruitment but is a facility to provide for immediate rehabilitation of the family in distress. Moreover, in the recent judgment in *Government of India vs. P. Venkatesh*, (2019) SCC Online 325, the Hon'ble Supreme Court held as follows:

"The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the High Court is unsustainable."

11. In the instant case, the application was admittedly submitted more than seven years after the death of the employee. Although this reason is not mentioned in the Impugned Order, in view of the binding and authoritative pronouncements of the Hon'ble Supreme Court, it is very clear that an application for compassionate appointment, which was submitted after seven years, cannot be countenanced.

12. Therefore, this writ petition is dismissed. There shall be no order as to costs.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The Superintendent of Police,
CBCID,
Chennai -4.

C.C. to The Government Pleader SR.NO. 33410/19

RJI (CO)
VS 31.05.2019

W.P.No.37152 of 2006



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