

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.09.2019
Pronounced on : 19.12.2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11978 of 2010

J. Vijay Anthony ... Petitioner

Vs

1. The Director
Directorate of Medical Education
Poonamallee High Road
Kilpauk
Chennai 600 010.

2. The Dean
Government General Hospital
Chennai 600 003.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to direct the respondents to process the petitioner's letter dated 3/8/2009 submitted to the second respondent and quash the letter, dated 25/2/2010 vide Na.Ka.No.33326/N4 (1)/95 issued by the second respondent and provide job on compassionate ground.

For petitioner ... Mr.N.Srinivasulu

For respondents ... Mr.A.Zakir Hussain
Government Advocate

O R D E R

Instant writ petition is to quash the letter, dated 25/2/2010, of the Dean, Government General Hospital, Chennai, second respondent and further, direct the respondents to provide job on compassionate ground to the petitioner.

2. The case of the petitioner is that when the petitioner's father was working as a Record Clerk, under the Government General Hospital, died in harness, on 18/11/1994. He left behind his wife, four children, including the petitioner. On the death of the petitioner's father, petitioner's mother filed an application, for appointment, on compassionate grounds. Petitioner's mother had studied upto Class IX. On 21/1/2000, the second respondent had called for the mother of the petitioner to attend Tamil test on 2/2/2000. However, it is claimed by the petitioner that his mother could not attend the test due to her ill health. On 3/3/2000, petitioner's mother gave a letter, stating that she is not keeping good health and therefore, her son, petitioner herein may be considered for compassionate appointment, on the reason that penury condition of the family continues. Petitioner gave all the necessary documents which were sought for, by the second respondent. By the impugned order, request of the petitioner's mother has been rejected, on the ground that request for appointment of the petitioner made by the petitioner's mother is beyond the period of three years and therefore, the same could not be considered and that too the petitioner was a minor on the date of the death of his father. It is this letter which is under challenge in the instant writ petition.

3. Two counters have been filed by the second respondent. In both the counters, the reasons given in the impugned letter has been reiterated.

4. Heard Mr.N.Srinivasulu, learned counsel for the petitioner and Mr.A.Zakir Hussain, learned Government Advocate for the respondents.

5. It is stated by the learned counsel for the petitioner that the petitioner's mother had given a representation as early as on 3/3/2000, but the letter had not been replied. Learned counsel for the petitioner further state that had it been made clear that the petitioner's mother's request cannot be acceded to despite her ill health, petitioner's mother could have accepted the appointment for the sake of employment. It is further stated that since the application had not been disposed of, it cannot be said that the request to give the petitioner a job is belated and cannot be considered. Time limit as mentioned in the impugned letter was laid down by the Government of Tamil Nadu, in G.O.Ms.No.120 Labour and Employment Department, dated 26/6/1995. Before the said G.O., there was no time limit was stipulated for making an application for compassionate appointment. Petitioner's father had passed away, just prior to the issuance of G.O. The said G.O cannot be made

applicable to the case of the petitioner because the right to get the compassionate appointment arose, on the date of the death of his father. A learned Single Judge of this Court, in C.Dilli Babu Vs. The State of Tamil Nadu, rep. By its Secretary, Public Works Department, Chennai & Ors (CDJ 2011 MHC 4831), while considering the said G.O., has observed as under:-

"8. The father of the petitioner was employed as NMR on daily wages from 01.08.1978. He worked from 1978 to June 1984 in the office of the Assistant Executive Engineer, P.W.D., Chepauk, Chennai. Thereafter, he was transferred to the 4th respondent Sub Division and worked there until his death. He was regularised in Service with effect from 01.01.1989 by an order dated 16.08.1995. The petitioner's mother is paid Family pension as her husband's service was regularised. The petitioner's mother was also paid DCRG. The compassionate appointment was declined on the ground that the petitioner made an application belatedly after 3 years. According to the respondent, the application was made by the petitioner after 6 years from the date of death of his father. According to the petitioner, there was no time limit for making application for employment on compassionate ground on the death of the Government Servant, until the Government issued G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995. The Government prescribes the limitation of 3 years only in G.O.Ms.No.120 and the same is extracted hereunder:

"The Tamil Nadu Administrative Tribunal, Madras in its orders in O.A.No.6554/1993 dated 15.10.1993 and in O.A.No.5111/94 dated 17.10.1994 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 application for appointment on compassionate grounds should be made within three years of the date of Government Servant;

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."

Thereafter, it was clarified by the Labour and Employment Department by letter dated 11.10.1995 that 3 years limitation for making application, is applied only in the case of the death of the Government Servant, who died after 26.06.1995 and there could be no limitation, in the case of death of the Government Servant, who died prior to 26.06.1995. That letter is extracted hereunder:

"In the Government Order 1st cited, the following modifications were issued to the existing scheme of appointments under compassionate grounds to the dependants of the deceased Government Servants, with effect from the date of issue of order:-

i) The applications for appointment on compassionate grounds should be made within three years of the death of Government Servants.

ii) The maximum age limit for such appointment be raised to 50 years in the case of widows of the deceased Government Servants.

2. In this connection, the District Collector, Tirunelveli Kattabomman District has sought for clarifications whether the time limit of three years period specified in the Government Order are applicable to the dependants of the Government Servants who died prior to the date of issue of the Government Order. In this connection, it is clarified that the time limit of three years period specified in the Government Order first cited is applicable only to the dependants of the Government Servants those who died while in service on or after 26.06.1995 and the above orders are not applicable to the past cases. Further the Government clarify, that the age limit of 50 years for appointment under the scheme in the case of widows as ordered in the said

Government Order is also applicable only to the widows of the Government Servants those who died on or after 26.06.1995."

9. Hence, in my view, the petitioner is right in his contention that the impugned order of the second respondent rejecting the application of the petitioner on the ground that the application was belatedly made after three years is contrary to the said letter dated 11.10.1995 of the Labour and Employment of the Tamil Nadu Government. Furthermore, as rightly contended by the learned counsel for the petitioner, the petitioner's mother made an application on 16.08.1996 and thereafter, the petitioner's mother made another application on 23.04.1997. It was also pleaded in the affidavit filed in support of the writ petition about the making of those applications. But in the Counter affidavit, there is no whisper about the same. Furthermore, I have perused the applications dated 23.04.1997 that was enclosed in the typed set wherein there is a seal as well as an endorsement. In these circumstances, the respondents are not correct in stating that the petitioner made a belated application. For all these reasons, the impugned order dated 09.03.2010 of the second respondent is quashed and the petitioner is directed to resubmit the application seeking compassionate appointment. The second respondent is directed to pass appropriate orders thereon, providing compassionate appointment, if there is no other impediment, within a period of twelve weeks from the date of submission of the application."

6. A perusal of the above mentioned paragraphs would show that the said G.O., would not apply to any employee who has passed away before 26/6/1995. The rejection of the case of the petitioner on the ground of delay is therefore, not correct in law. It is now well settled that compassionate appointment is to enable a family to tide over the sudden crisis or distress which has resulted out of the Government employees who have died in harness. Petitioner's mother made her claim for appointment on compassionate basis immediately, on the death of her husband. Her application was not yet rejected. Owing to her ill health, she requested that her son may be considered for appointment. Request for appointing the petitioner on compassionate basis is not a fresh application is in fact a continuation of the

application of the mother. The object of giving compassionate appointment is to help the family to tide over the penury circumstances in which the family is placed on the death of the employee. The fact that the petitioner is a minor at that time and had attained the majority only latter, cannot be a ground to reject the case of the petitioner. In fact, a Hon'ble Division Bench of this Court in Selvi R.Anbarasi Vs. Chief Engineer (Personnel), Chennai, {2006 (2) MLJ - 200} has observed as under:-

"If an application filed within the time limitation is dismissed owing to the applicant being a minor, the same cannot be held to be time barred if an application is made by the same individual on their attaining majority."

7. The said judgment has been reaffirmed by another Hon'ble Division Bench in P.Sathiarman, Tiruchirapalli District vs. The Secretary to Government, Department of Electricity & Others (CDJ 2013 MHC 4860), wherein the Hon'ble Division Bench observed as under:-

"5. The learned counsel for the respondents contended that appointment on compassionate ground cannot be given dehors the circulars and orders of TNEB. Further, providing appointment to a person on compassionate ground after his attaining majority will amount to keeping a post reserved for him till he attains majority. In this respect, the learned counsel relied on a Division Bench decision of this Court in E.RAMASAMY V. TAMIL NADU ELECTRICITY BOARD AND ORTHERS [2007 WLR 796] ."

8. As stated above, G.O.Ms.No.120, Labour and Employment Department, dated 26/6/1995, is not applicable to the facts of this Court.

9. In view of the above, writ petition is allowed and the impugned letter, dated 25/2/2010, passed by the Dean, Government General Hospital, Chennai, second respondent, is set aside. The Dean, Government General Hospital, Chennai, second respondent, is directed to reconsider the application of the petitioner, to ascertain as to whether the penury circumstances of the petitioner continues or not, so as to enable the

petitioner to get employment on compassionate basis, within a period of eight weeks, from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

mvs.

To

1. The Director
Directorate of Medical Education
Poonamallee High Road
Kilpauk
Chennai 600 010.

2. The Dean
Government General Hospital
Chennai 600 003.

+1 cc to Mr.N.Srinivasalu Advocate sr106399

+1 cc to Government Pleader sr106720

Order made in
W.P.No.11978 of 2010

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