

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2019

CORAM

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.188 of 2010

Mohammed Rizwan

... Petitioner

Versus

1.State of Tamil Nadu,
rep.by its Secretary Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 600 009.

2.Director of Local Fund Accounts,
IV Floor, Kuralagam,
Chennai - 108.

... Respondents

Prayer:-

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records relating to the order passed by the 2nd respondent in Na.Ka.No.g & ep/II(7)/35758/ 2005, dated 20.01.2009 and quash the same and thereby direct the 2nd respondent to give appointment to the petitioner on compassionate ground.

For Petitioner : Mr.A.R.Nixon

For Respondents : Mrs.K.Bhuvaneswari,
Additional Government Pleader

O R D E R

The Instant Writ petition is for Writ of Certiorarified Mandamus calling for the records relating to the order dated 20.01.2009 passed by the Director of Local Fund Accounts in Na.Ka.No.g & ep/II(7)/35758/ 2005.

2.Shorn of details, the facts of the case are as under:-

i) The father of the petitioner worked as Inspector in the Local Fund Accounts department. He died in harness on 13.07.2003, leaving behind his wife, two sons and one daughter.

ii) The death of Mohammed Shanawaz, father of the petitioner, resulted in Penury in the family, The wife of the

deceased, filed an application to appoint her elder son on compassionate ground.

iii) Since the elder son for whom the appointment was sought left the family, the widow of Mohammed Shanawaz made an application for appointment for the younger son/petitioner herein, on compassionate basis.

iv) The application was rejected by an order dated 20.01.2009, on the ground that the application has been filed after three years of the death of Mohammed Shanawaz.

v) Challenging the order dated 20.01.2009, passed by the 2nd respondent in Na.Ka.No. 11 & 12/II(7)/35758/ 2005, the instant writ petition has been filed.

3. The 2nd respondent department has filed a counter statement. In the counter statement, it has been stated that there was a ban on recruitment between the year 2001 and 2006. After 2006, i.e., after the ban was lifted, particulars were sought for from the family of the petitioner by letter dated 31.10.2008. The counter states that the application seeking appointment for the petitioner has been rejected. Since it has been filed after three years of the death of Mohammed Shanawaz.

4. A perusal of the counter shows that the application sent by the widow of Mohammed Shanawaz for appointment on compassionate basis for the elder son viz., Mohammed Rizwan was under consideration.

5. Admittedly, the only reason given for rejecting the application is that the application seeking appointment to the petitioner has been filed beyond time. Since there was a ban on recruitment, the application of the widow of Mohammed Shanawaz could not have been considered between the year of 2001 to 2006 for appointment on compassionate basis. The application could have been considered only after lifting of the ban.

6. No doubt the appointment on compassionate basis is made only to ensure that the financial crunch faced by the family, is taken care of and the family is not driven to starvation. The Government was looking into matters of appointment on compassionate basis, after lifting of the ban i.e., after 2006. The Government had thereafter chosen to relax the period of three years within which the application was to be made/considered.

7. Admittedly, the application for appointment on the ground of compassionate basis for the petitioner has been made on 20.01.2009 that is, within a period of three years from the lifting of the ban. In such circumstances, it cannot be stated that application was belated or the Government could have rejected the application only on the basis of delay. The reason made by the Government in the impugned order is unsustainable.

8.The learned counsel for the respondents have tried to justify the order of the Director of the Local Fund on the ground that the petitioner's family had not come up with clean hands in as much as, the elder son for whom the appointment has been sought had been elsewhere appointed.

9.This is not the reason which is mentioned in the impugned order. Counters cannot be used for improving the case of the Government. It is settled law that affidavits cannot be used by the Government to fill in the blanks of the impugned order. The recitals in the counter cannot be accepted.

10.This Court is aware that two applications for appointment on compassionate basis are not maintainable. The request for appointment on compassionate basis given for the elder son had not been decided. Further, particulars had been called for by the respondents from the widow of Mohammed Shanawaz(father of the petitioner).

11.At this juncture, the widow of Mohammed Shanawaz requested for appointment of the petitioner herein on compassionate basis. In such circumstances, it cannot be said that the application of the petitioner should be dismissed only on the ground of it being time barred, that is made after the period of three years from the death of Mohammed Shanawaz.

11.Resultantly, the Writ petition is allowed. The respondents are directed to give appointment to the petitioner on compassionate basis.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary Municipal Administration and
Water Supply Department,
State of Tamil Nadu,
Fort St.George, Chennai - 600 009.

2.The Director of Local Fund Accounts,
IV Floor, Kuralagam,
Chennai - 108.

+1cc to Mr.A.R.Nixon, Advocate SR.76426
+1cc to the Government Pleader SR.76518

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RR(CO)
CB(22/10/2019)



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