

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.20287 of 2010

T.Ashok Kumar

...Petitioner

Vs

The Engineer in Chief (W.R.O)
cum Chief Engineer (PWD)
Chepauk,
Chennai-5.

...Respondent

Prayer:- This Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the respondent vide his proceeding Letter No.S4 (1)/34 66726/2008 dated 07.05.2009 and quash the same as highly illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and issue consequential directions to the respondent to consider the claim of the petitioner for appointment on Compassionate Grounds.

For Petitioner : Mr.C.Veeraraghavan

For Respondent : Mr.A.Ansar, Government Advocate

ORDER

Challenging the order of the respondent vide his proceeding Letter No.S4(1)/34 66726/2008 dated 07.05.2009, this writ petition has been filed.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3. The petitioner's father late Tirumalaiswamy was working as Lascar at Amaravathy Irrigation System. While he was in service, he died on 7.10.2001, leaving behind the petitioner's mother, elder brother and elder sisters and grand mother. The petitioner's elder brother who have studied upto 7th standard, applied for appointment on compassionate ground to the respondent on 31.01.2002. At that time, the petitioner was a minor. The application submitted by the petitioner's

brother was returned. Thereafter, the said application was not represented by the petitioner's brother. The petitioner, after attaining majority, has submitted the application on 06.03.2009 to the Chief Minister's Special Cell. The respondent had rejected the aforesaid application by issuing the impugned order dated 07.05.2009 stating the reason that the petitioner's application is time barred as per the G.O Ms.120 Labour and Employment Department dated 26.06.1995. Challenging the said impugned order, this present writ petition is filed.

4. Similar issue has been considered by the Division Bench of this Court in W.A.No.3300 of 2019 dated 24.09.2019 in which paragraphs 5 and 6 are extracted hereunder:

5. Let us also consider a judgment of the Hon'ble Supreme Court, on the aspect of a person, on attaining majority and claiming appointment on compassionate grounds. In National Institute of Technology v. Niraj Kumar Singh reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

"21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true

that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LRs. and Ors., (2005) 12 SCC 1]"

6. Madurai Bench of Madras High Court, vide order dated 22.04.2016, in Writ Appeal(MD)No.329 of 2015 [(1) The Inspector General of Prisions, Tiruchirapalli District, Tiruchirapalli-1 (2) The Chief Director, Prison Department, Office of the Chief Director of Prison Department, Egmore, Chennai 600 008 Vs. P.Marimuthu], following the above principles, held that Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death and at paragraphs 37, 38, 39 and 40, as follows:-

"37. Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper

implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains

majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in *Sushma Gosain v. Union of India* reported in 1989 (4) SCC 468."

5. Apart from that, on the facts of the case, the writ petitioner has submitted the application in the year 2009 addressed to the Chief Minister's Special Cell, without making any application to the concerned authority. The respondent had rejected the said application that the petitioner has made the application for appointment under Compassionate Ground, beyond three years period. Therefore, as per the Government Order in G.O Ms. No.120 Labour and Development Department, dated 26.06.1995, the petitioner has not submitted the application within the period of three years as rightly stated by the respondent. Therefore, there is no ground to interfere with the order of the respondent and consequently, the writ petition is liable to be dismissed, in the light of the facts and circumstances of the case and the decision cited supra.

6. In fine, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Engineer in Chief (W.R.O)
cum Chief Engineer (PWD)
Chepauk,
Chennai-5.

+1cc to the Government Pleader Sr.87749

W.P.No.20287 of 2010

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