

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-03-2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 1126 of 2018
W.M.P.No.1403 of 2018

N.Jayavel

... Petitioner

Vs

1. Government of Tamil Nadu,
rep.by its Secretary to Government,
Labour & Employment Department,
Fort St.George, Chennai-600 009.
2. The Collector,
Tiruvannamalai District
Tiruvannamalai-606 601.
3. Tahsildar,
Polur-606 803.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus to call for the records relating to the proceedings (i) No.A3/12360/2012 dated 02.06.2012 issued by the second respondent and (ii) Na.Ka.A/7089/2016 dated 16.03.2017 issued by the third respondent and to quash them as arbitrary and illegal and direct the respondents to appoint the petitioner in any suitable post in any unit under compassionate grounds.

For Petitioner : Mr.A.Panneer Selvam

For Respondents: Mr.A.N.Thambi Durai
Special Government Pleader

O R D E R

The order of rejection dated 16.03.2017, rejecting the claim of the writ petitioner for providing compassionate appointment is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the father of the writ petitioner late Shri.T.Mani was employed as a Village Assistant and he died on 01.04.2007. The wife of

the deceased employee submitted an application on 22.05.2007 seeking appointment on compassionate ground. The said application was rejected in the year 2017, stating that the mother of the writ petitioner was not qualified for appointment. During the relevant point of time, the son was a minor and he was not competent to submit his application as he had not attained the majority. The petitioner attained the age of majority on 16.03.2015 and thereafter, he submitted an application seeking appointment on compassionate ground. The said application is now rejected vide proceedings dated 16.03.2017 stating that the writ petitioner has not submitted an application within a period of three years from the date of the death of the deceased employee.

3. Thus, the writ petitioner is constrained to move the present writ petition.

4. The learned counsel for the writ petitioner states that the period of three years is to be reckoned from the date of the attaining the age of majority and not from the date of the death of the deceased employee. In this regard, the writ petitioner cited a judgment of this Court reported in 2004 (3) CTC 120 (T.Meer Ismail Ali vs. The Tamil Nadu Electricity Board) and the orders passed in W.P.No.1335 of 2015 dated 03.11.2015 and also the judgment dated 15.10.2015 in W.P.No.32252 of 2015. The final order passed in W.P.No.7301 of 2008 dated 08.07.2011 is also cited. In the said order, this Court has held that in case of minors, three years period for submitting an application and seeking appointment on compassionate grounds, should be reckoned from the date of attaining the majority and not from the date of the death of the deceased employee. It is pertinent to note that the above judgments were overruled by the Division Bench of this Court, in the case of The Inspector General of Prisons vs. P.Marimuthu {2016 (5) CTC 125}. Thus, the Division Bench has taken a view that the period of three years is to be taken from the date of the death of the deceased employee, as per the terms and conditions of the scheme of compassionate appointment. Thus, the earlier orders passed by this Court cannot be relied upon. This apart, the Supreme Court also in a very recent case in The Government of India vs. P.Venkatesan passed in C.A.No.2425 of 2019 dated 1st March 2019 held as follows:

"The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is

caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected on 3 January 1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then re-consider the representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on 13 November 2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute.

5. In view of the judgment of the Hon'ble Supreme Court dated 1st March 2019, this Court is of the opinion that the earlier orders passed by the Single Bench of this Court cannot be cited as a precedent.

6. This apart, in the present case on hand, the deceased employee passed away on 2007 and the first application submitted by the mother of the writ petitioner was rejected. Even, as per the terms and conditions, there is no provisions for entertaining the second application submitted by the another legal heir, in the present case, the writ petitioner submitted an application after the rejection of the application submitted by his mother. This being the factum of the case, now after a lapse of about one year, the case of the writ petitioner cannot be considered for providing a compassionate appointment and there is no infirmity as such in respect of the impugned order passed.

7. Accordingly, the writ petition stands dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Secretary to Government,
Government of Tamil Nadu,
Labour & Employment Department,
Fort St.George, Chennai-600 009.

2. The Collector,
Tiruvannamalai District
Tiruvannamalai-606 601.

3. Tahsildar,
Polur-606 803.

+1 cc to Mr.P.R.Satyanarayanan, Advocate, S.R.No.25060

+1 cc to the Government Pleader, S.R.No.25139

PM(CO)
SSM(03/05/2019).

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