

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.08.2019

CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN
and
The Honourable Ms.JUSTICE P.T.ASHA

W.A.No.1922 of 2019

K. Gopinath

.. Appellant

Vs.

1. The Secretary
Municipal Administration and
Water Supplies Department
Supplies Department
Secretariat, Fort. St. George,
Chennai.

2. The Commissioner of Municipal
Administraion
Ezhigalam,
Chennai.

3. The Commissioner,
Vellore Corporation,
Vellore.

... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent praying to set aside the order of the learned Judge in dismissing the Writ Petition in W.P.No.21288 of 2018, dated 14.03.2019 for appointment of compassionate is contrary to law and manifestly erroneous, unjust and unconstitutional is even otherwise irregular and without jurisdiction.

Prayer in W.P.No.21288 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus calling for the records relating to the order passed by the 2nd respondent in Na.Ka.No.4458/2016/H2 dated 27.03.2018 quash the order and consequently direct the 2nd respondent to consider the

petitioners representations on compassionate ground for any eligible post by relaxing the three years rule to attain majority.

For Appellant	: Ms. Priya for Mr. V. Raghavachari
For Respondents	: Mrs. A. Srijayanthi Spl Gp for R1 and R2 M/s.P.Shanthi for R3

J U D G M E N T

(Judgment of the Court was delivered by P.T.ASHA, J.)

The above intra court appeal arises in respect of an order denying the request made by the appellant for compassionate appointment and the order being confirmed by the learned Single Judge in W.P.No.21288 of 2018.

2. It is necessary to briefly allude to the following facts necessary for disposing of this appeal.

The father of the appellant herein, one Karthikeyan was employed as Accountant at the Gudiyatham Municipality. On 31 August 2010, he died in an accident. The appellant's father was due to retire in the year 2019. Besides the appellant, his mother, another brother and a sister were the legal heirs of deceased Karthikeyan. At the time of his father's death, the appellant was just 14 years old and was in the IX Standard. The appellant on attaining 16 years and completing X standard had made an application for compassionate appointment with the third respondent on 2 November 2012. He had also enclosed the requisite documents in the form of no objection certificate from his mother, sister and brother and also all other certificates.

3. The appellant would submit that he was orally informed by the third respondent that the minimum qualification was XII Standard and a lower grade in Typewriting in one language and higher grade in Typewriting in another language. In fact, the appellant when he had first submitted his application on 2 November 2012 was already possessed with the requisite qualification for being appointed as a Junior Assistant or Revenue Assistant in the Municipality.

4. The appellant would further submit that after he had completed his XII standard, he sent another representation in June 2014. This was followed by yet another representation dated 15 July 2015. The appellant's repeated reminders were not yielding the desired effect. Ultimately the appellant received a reply dated 26 October 2017 seeking a clarification as to why the wife of the deceased employee, namely the appellant's mother, did not apply for the job. It is note worthy that this clarification has been asked for the first time, seven years after the death of the employee and five years after the application for compassionate appointment was submitted. By letter dated 27 November 2017, explanation was submitted by the appellant's mother stating that she was suffering from a chronic wheezing problem and hence was not suited for the job.

5. Ultimately by order dated 27 March 2018, the second respondent had rejected the appellant's request for compassionate appointment on the ground that he had not attained the age of majority within three years from the date of death of his father and had not applied within the said period of three years. It is challenging this order that the appellant moved the Writ Court.

6. The third respondent had filed a counter affidavit in which it was contended that though the appellant had the requisite education qualification for the post of Junior Assistant in the Corporation service, they were unable to provide employment to him in the Corporation since the deceased was not a Corporation employee. They would further contend that the appellant had not reached the age of 18 years within three years from the date of death of his father and therefore the rejection was in order. Further the appellant was aged 14 years when his father died and attained the age of 18 only in the month of October 2014. The respondent therefore prayed for dismissal of the Writ Petition.

7. The Learned Single Judge by order dated 14 March 2019 was pleased to dismiss the Writ Petition on the ground that the scope of compassionate appointment has to be restricted to the terms and conditions of the Scheme and the same cannot be stretched by the Courts to provide appointment on the ground of misplaced sympathy. The learned Single Judge has also found that the request was belated. Challenging the said order, the appellant is before this Court.

8. When the appeal had come up on 22 July 2019, this Court had directed the Commissioner, Vellore Corporation to file a statement before the Court indicating the posts available in the Corporation for appointment. They were also directed to clarify as to whether there is any seniority list maintained by the Corporation with regard to the request for compassionate appointments and the relevant scheme for compassionate appointment. In deference to the orders of this Court, the third respondent has filed a statement today. The first tabulated statement contained the posts that are now available in the Vellore Corporation namely Junior Assistant cum Typist, Sanitary Worker and Unskilled Worker. The statement also contains the second list which give details about the compassionate appointments made during the period 2019. Finally a third list showing the seniority of the candidates applied for compassionate appointment has also been produced. The appellant's name does not figure in the third list since he has not been within the realm of consideration.

9. The factual matrix very clearly shows that application for compassionate appointment was made within the time indicated in the scheme. The appellant was in possession of the required qualification as on the date on which he made the application. The post of Junior Assistant cum Typist is available even now.

10. We are informed that the appellant would be the senior most candidate for compassionate appointment, taking into account the death of his father on 31 August 2010.

11. The order dated 27 March 2018 is set aside. The order passed by the learned Single Judge is also set aside.

12. We direct the third respondent to consider the case of the appellant for compassionate appointment taking into account the eligibility and the availability of the post. Such exercise shall be completed within three months from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrn/tar

To

1. The Secretary
Municipal Administration and
Water Supplies Department
Supplies Department
Secretariat, Fort. St. George,
Chennai.

2. The Commissioner of Municipal
Administraion
Ezhigalam,
Chennai.

3. The Commissioner,
Vellore Corporation,
Vellore.

+1cc to M/s.P.Shanthi , Advocate SR.No. 67034

+1cc to Mr.V.Ragavachari , Advocate SR.No. 66663

+1 cc to Government Pleader Sr.No. 67101

W.A.No.1922 of 2019

A.SK(24/09/2019)