

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.06.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.2689 of 2018

Karunakaran

... Petitioner

Vs.

1.The Principal Secretary,
Revenue Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

2.The District Collector,
Thiruvallur District, Tiruvallur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No.A1/21483/2017 dated 28.09.2017, passed by the 2nd Respondent herein and quash the same as unsustainable in law and subsequently direct the respondents to appoint petitioner to the post of Office Assistant in the office of the 2nd Respondent/ Village Administrative Office on compassionate grounds.

For Petitioner : Mr.M.Ramadoss

For Mr.K.Gajendiran

For Respondents : Mr.J.Pothiraj

Special Government Pleader

ORDER

The petitioner's father was working as Village Assistant under the control of the 2nd respondent. While in service, he died on 04.06.2017 due to cardiac arrest. On 18.09.2017 the petitioner submitted a representation seeking for consideration of his claim for compassionate appointment. Thereafter, he was directed to appear in person for interview. However, by communication dated 28.09.2017, the petitioner was informed that his application was returned stating that he has crossed the upper age limit of 35 years, therefore, not eligible to be considered for appointment. The said order is put to challenge in the present writ petition.

2.The petitioner's father at the time of his death left behind three daughters and widowed wife apart from the petitioner. Since he was the sole bread winner of the

family, the petitioner being unemployed, the family was left in great distress and penury after the sudden death of his father. Therefore, an application was made for appointment on compassionate ground, but unfortunately the same was returned on the ground that the petitioner has crossed the upper age limit and the authority has advised the petitioner's family for some other legal heir for such consideration within the prescribed age limit.

3.The learned Special Government Pleader for the respondents mainly would submit that the upper age limit as fixed by Special Rule is 35 years for Scheduled Caste candidates and therefore, the petitioner though belonging to SC community has crossed the upper age limit and therefore, his family was asked to forward any other member of the family of the deceased employee, who satisfies the age criteria, in order to provide compassionate appointment.

4.However, the learned counsel for the petitioner would submit that this Court, in a number of decisions, has held that in respect of Scheduled Caste Community, the Government further relaxed the age limit as provided by Government instructions and therefore, the claim of age relaxation ought to be considered by the respondents. The learned counsel would refer to an order passed by this Court in W.P.744 of 2003 dated 27.10.2005, wherein the Division Bench of this Court, at paragraph 9, inter alia, has held as under:

"In the light of the above information and of the fact that the petitioner being a Scheduled Caste is eligible for age relaxation as per the Government letter dated 24.11.1982 and also of the fact that his elder brother though employed, is living separately and he is not contributing anything to the family of the deceased, we are of the view that the respondents 1 and 2 ought to have considered the case of the petitioner and provided employment on compassionate ground to mitigate the sufferings of the deceased family. All the above mentioned relevant facts have not been considered by the Tribunal which has committed an error in dismissing the application filed by the petitioner.

Under these circumstances, the impugned order of the Tribunal dated 18.6.2002 made in O.A.No.1844 of 2002, the order of the Director of Medical Education, first respondent herein, dated 6.1.1999 and the order of the Dean, Madurai Medical College, second respondent herein, dated 19.11.2001 are quashed and a direction is issued to the respondents, particularly, to the second respondent to

appoint the petitioner/applicant in any one of the vacancies depending on his qualification on compassionate ground and if no suitable vacancy is available for the present, his name shall be kept in wait list and he shall be given preference in the next vacancy. The writ petition is allowed with the above direction. No costs."

5.The learned counsel would also rely on the order passed by the learned Single Judge of this Court in W.P.No.6082 of 2011 dated 23.08.2011 wherein a similar relief was granted.

6.Yet another decision of this Court in W.P.No.8831 of 2013 dated 21.10.2016 has been relied on by the learned counsel for the petitioner, wherein a similar claim has been allowed by the learned Single Judge, which could be seen at paragraphs 5 & 6, which are extracted hereunder:

"5.It is seen that Rule 5(1) of the Special Rule for Tamil Nadu Basic Services prescribes the age limit as 35 years in respect of the Schedule Caste and Schedule Tribe, for appointment in the posts in Classes III & IV. However, the Government of Tamil Nadu, Labour and Employment Department, by letter No.46571/N1/82-3, dated 24.11.1982, has clarified the question of age relaxation in the case of Scheduled Caste and Scheduled Tribe stating that the dependents of the deceased Government servants, belonging to the SC/ST Community, can be appointed on compassionate ground in relaxation of age rule even if they exceed the age limit prescribed in the Special Rules, when it is more beneficial to the individual. Under such circumstances, as contended by the learned counsel for the petitioner, when there is a specific provision for relaxation the respondents have to consider the above said relaxation provision as per the Government Order. Further, the petitioner belongs to Schedule Caste and as such, he can claim age relaxation in the light of the above cited Government Letter dated 24.11.1982. Under such circumstances, the impugned order rejecting the claim of the petitioner for compassionate appointment on the ground of over-aged, is not legally sustainable.

6.Hence, the impugned order dated 23.03.2012 passed by the 2nd respondent is quashed and this Court directs the 2nd respondent to pass appropriate orders, in respect of providing appointment to the

petitioner on compassionate ground, by giving age relaxation, in the light of the Government letter No.46571/N1/82-3, dated 24.11.1982, Labour and Employment Department, within a period of four weeks from the date of receipt of a copy of this order.

With the above terms, the writ petition is allowed. No costs."

7. Therefore, the learned counsel would submit that the age relaxation is permissible under various Government instructions and unfortunately, the authority, without considering the same, has mechanically returned the application, stating that the petitioner has crossed the upper age limit of 35 years.

8. This Court is in agreement with the submission made by the learned counsel appearing for the petitioner. Though the learned Special Government Pleader has objected to the relief being granted on the ground that the petitioner has crossed the upper age limit of 35 years, yet in the above decisions, it has been held that the upper age limit of 35 years can be relaxed in respect of Scheduled Caste candidates for providing appointment on compassionate ground. In fact, the decisions of this Court, as aforementioned, have been rendered on consideration of the Government instructions issued on the subject matter.

9. Therefore, it is very well established that the petitioner is entitled to be granted age relaxation while considering his claim for compassionate appointment. In this case, it appears that the deceased employee left the aged widowed wife, three daughters and the petitioner as his legal heirs. From this fact, it appears that the petitioner's family is in need of employment assistance in order to sustain the family, as mentioned above, particularly in the teeth of the fact that the deceased employee had left behind three daughters.

10. In view of the above, this Court is of the considered view that the petitioner's claim for compassionate appointment shall be considered sympathetically, by granting necessary age relaxation to the petitioner in terms of the Government instructions/orders and also in conformity with the orders passed by this Court in the above mentioned decisions. The authority shall pass appropriate orders, by considering the claim of the petitioner on the basis of the indigent circumstances under which the family is placed after the death of the employee concerned, within a period of four weeks from the date of receipt of a copy of this order.

11.The Writ Petition is disposed of, as indicated above. No costs.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

Sgl
To

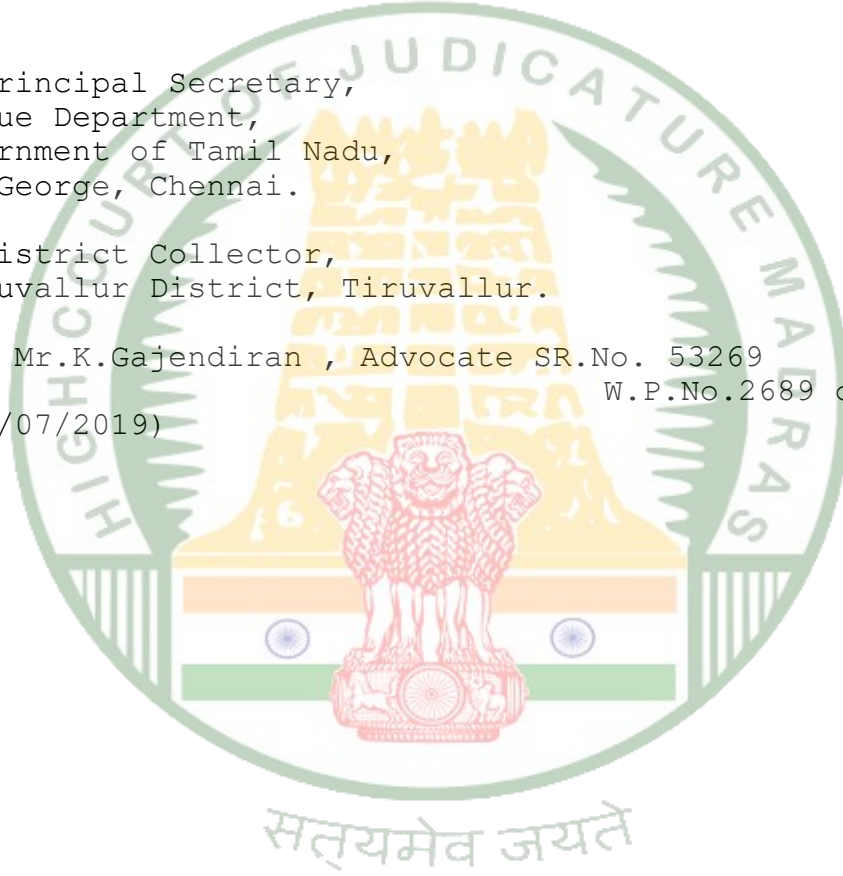
1.The Principal Secretary,
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St. George, Chennai.

2.The District Collector,
Thiruvallur District, Tiruvallur.

+1cc to Mr.K.Gajendiran , Advocate SR.No. 53269

W.P.No.2689 of 2018

A.SK(26/07/2019)



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