

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.11.2019

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.24596 OF 2014

AND

WMP.NO.32217 OF 2018

M.Pappathi

..Petitioner

Vs

The Managing Director,
TamilNadu State Transport Corporation (Coimbatore) Ltd.,
No.37, Mettupalayam Road,
Coimbatore-641043

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus Calling for the entire records relating to the proceedings in 552/ E3D/ PaThu1/ THA AHAPOKA(KO)/10 dated 7.10.2010 of the respondent and quash the same and direct the respondent to consider the claim of the petitioner to appoint the petitioners son on compassionate grounds.

For Petitioner : M/s.C.Veeraraghavan
For Respondents : Mr.P.Kannan Kumar

O R D E R

The prayer sought for in the Writ Petition is to call for the entire records relating to the proceedings in 552/ E3D/ PaThu1/ THA AHAPOKA(KO)/10 dated 7.10.2010 of the respondent and quash the same and direct the respondent to consider the claim of the petitioner to appoint the petitioners son on compassionate grounds.

2. The Brief facts of the case is that the writ petitioner's husband was employed as sweeper in the respondent corporation. While he was in service, he died on 04.06.2000 leaving behind the writ petitioner and her two sons. At the time of the death of the writ petitioner's husband, both children were minors and after completing ITI (Mechanic) in the year 2009 by the first son of the writ petitioner, the writ petitioner made representation to the respondent seeking appointment on

compassionate grounds, but the said representation was not considered by the respondents. Therefore, the petitioner has made another representation to the Chief Minister's Cell, which has been forwarded to the respondent and the respondent pass an order in 552/E3D/PaThu/THA AHAPOKA(KO)/10 dated 07.10.2010 and rejected the claim made by the petitioner. Challenging the same, the present writ petition is filed.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the documents available on records.

4. Though the respondent has not chosen to file counter affidavit in the present writ petition, on facts of the case, the respondent died on 04.06.2000 while in service as Sweeper in the respondent corporation. The writ petitioner has made representation for employment to her first son on 20.04.2010, but her application was rejected by the respondent on 07.10.2010.

5. As averred by the writ petitioner in the affidavit, her children were minors at the time of death of her husband and on completion of ITI Mechanic course by her first son in the year 2009, she made representation to the respondent for appointment on compassionate grounds. The said representation was rejected by the respondent, hence she representation to the Chief Minister's Cell and the same was forwarded to the respondent. The said representation was also came to be rejected by the respondent, which is impugned in the present writ petition.

6. As per the submissions made by the writ petitioner, she made representation in the year 2009 seeking appointment on compassionate grounds in view of death of her husband, who died in the year 2000. Therefore the said application is barred by laches as per the G.O.Ms.No. 120, dated 26.06.1995.

7. Hence, following the catena of decisions of this court and the various Government Orders issued from time to time governing the scheme of employment assistance on compassionate grounds, this court is of the view that application should be submitted within three years from the date of death of the employee; a member of the family, who is 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. In the case on hand, employee died in harness on 04.06.2000 but the petitioner has made representation for employment assistance to her first son on 20.04.2010. In this regard, it is relevant to refer the latest order passed by me while sitting in Madurai Bench of

Madras High Court in W.P.(MD).No.362 of 2016 dated 24.07.2019.
The relevant paragraph of the said order is as under:-

" 6. The petitioner's father died on 15.10.1998. The petitioner submitted the application on 10.10.2011, beyond the period of three years. Further, on a perusal of the counter affidavit, the third respondent has stated that the petitioner's mother made an application to the respondents, seeking appointment to her elder son T.Lenin and the same was rejected on the ground that the application was submitted after three years period from the date of death of the petitioner's father. The said order has not been challenged and the same has become final. Now, the petitioner, again made an application seeking employment on compassionate ground and the said application has been rejected. Challenging the rejection order, the present writ petition is filed before this Court.

7. In The Inspector of Prisons, Tiruchirapalli District, Tiruchirapalli and Anr., Vs. P.Marimuthu, decided on 22.04.2016, this Court has held as follows:-

"36. 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.[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]"

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.

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."

8. In the case on hand, the petitioner has filed the application beyond the period of three years and the second respondent has already rejected the claim of the petitioner's mother on the earlier occasion. Therefore, considering the facts and circumstances of the case and in the light of the aforesaid decision of this court, this court is of the view that the relief sought by the petitioner cannot be granted. Hence, the present writ petition is liable to be dismissed.

9. Under the facts and circumstances of the case, this writ petition stands dismissed. No costs."

5. The issue on hand is squarely covered by the decisions as extracted supra. Therefore, this court has no hesitation to reject the case of the petitioner, as devoid of merits. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Managing Director,
TamilNadu State Transport Corporation (Coimbatore) Ltd.,
No. 37, Mettupalayam Road, Coimbatore-641043

+1cc to Mr.P.Kannan Kumar, Advocate, S.R.No.97850

W.P.No. 24596 of 2014
and
WMP. No. 32217 of 2018

EV(CO)
CS/09/03/2020