

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25936 of 2014

R.Kothandan
Petitioner

..

Vs

1.The State of Tamil Nadu
Rep. by the Director General
Highways Department
PWD Complex, Kamarajar Salai
Chepauk, Chennai-600 005

2.Chief Engineer (Construction and Maintenance)
Highways Department
PWD Complex, Kamarajar Salai
Chepauk, Chennai-600 005

3.The Divisional Engineer
Highways Department
Building and Maintenance Office,
Tiruvannamalai 606 601

..

Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Memo No.Estt.1/(1)/12991/2013 dated 07.05.2013 and Memo No.1272/2013/B2 dated 16.08.2013 of the 3rd respondent, quash the same and consequently direct the 1st respondent to consider and appoint the Petitioner to the post of Junior Assistant on compassionate grounds with all attendant benefits flowing therefrom.

For Petitioner : Mr.S.Menon

For Respondents : Mr.M.Karthikeyan, Addl Govt.
Pleader
for R1 to R3.

ORDER

This Writ Petition is filed challenging the order of the 1st

respondent dated 07.05.2013 and also the Memo No.1272/2013/B2 dated 16.08.2013 of the 3rd respondent and seeks to quash the same and consequently to direct the 1st respondent to consider and appoint the Petitioner to the post of Junior Assistant on compassionate grounds with all attendant benefits flowing therefrom.

2. The Petitioner's father was working as Salai Paniyalar under the 3rd respondent and died in harness on 11.11.1988 leaving behind the Petitioner and his two brothers and two sisters as his legal heirs. Admittedly, the petitioner at the time of demise of his father, was a minor. The Petitioner submitted an Application to the 2nd respondent seeking appointment to the post of Junior Assistant, on compassionate grounds, in the Highways Department, after attaining the age of majority.

3. The said application was rejected by the Superintending Engineer, Villupuram Division, by an order dated 29.03.2000 on the ground that the application was submitted after nine years from the date of death of his father and thus belated.

4. The Government of Tamil Nadu in the Labour & Employment Department, issued a clarificatory letter No.39924/Q1/95-1 dated 11.10.1995 in G.O.Ms.No.120 dated 26.06.1995 to the effect that the time limit of three years for submitting Application seeking appointment on compassionate ground is not applicable for the government servants who died on or before 26.06.1995. Accordingly, on the basis of the said Clarificatory Letter dated 11.10.1995, the Petitioner submitted another application to the 2nd respondent on 22.05.2006, seeking reconsideration of his earlier application for compassionate appointment.

5. On receipt of the said application, the 2nd respondent vide Memo dated 26.09.2006, after due consideration and scrutiny of the application, registered his application and assigned Waiting List No.585A for being appointed.

6. It is stated that since the Petitioner possessed requisite educational qualification to be considered for the post of Junior Assistant, while calling for options by the Superintending Engineer, the Petitioner did not exercise the option to be appointed as Salai Paniyalar.

7. The 1st respondent vide Memo No.Estt 1/1 12991/13 dated 07.05.2013 rejected Petitioner's application for appointment on compassionate grounds citing G.O.Ms.No.86/Q1/2010 dated 04.05.2010, Labour and Employment Department, on the ground that the application seeking appointment should be submitted within three years from the death of the government servant.

8. The above said communication rejecting the Petitioner's application was communicated to the Petitioner through 2nd and 3rd respondent by Memo dated 16.08.2013.

9. The learned counsel appearing for the Petitioner submitted that the impugned order passed by the 1st respondent is illegal on the ground that the cited G.O.,s for rejecting the Petitioner's application for appointment on compassionate ground would not apply to the facts of the case. On the other hand, the Petitioner's application has to be considered prospectively. Hence the impugned order is liable to be quashed.

10. The learned Additional Government Pleader appearing for the respondents submitted that second application submitted by the Petitioner is not maintainable. The learned Additional Government Pleader further submitted that the Petitioner has filed the 1st application in the year 1995. After considering the Petitioner's application, the Superintending Engineer, Villupuram Division, rejected the said first application on the ground that the application was belated. However, the Petitioner has not challenged the said order and therefore, the said rejection order has become final. After rejection of the said order, the Petitioner has filed application dated 26.09.2006 with the lapse of six years. Therefore, as per settled law of the Honourable Supreme Court and this court, the Petitioner cannot seek appointment on compassionate ground. Therefore, this Writ Petition is liable to be dismissed.

11. The admitted facts in this case are that the Petitioner has filed application in the year 1995 and the said application was rejected on 29.03.2000. Subsequently, second application was filed on 26.09.2006 for appointment on compassionate ground. The respondents 2 and 3, has stated in the impugned order that the application submitted by the petitioner is beyond three years. According to the learned Additional Government Pleader, the second application submitted by the Petitioner seeking appointment on compassionate ground and the request thereon had no merit and accordingly, the rejection order is passed by the Respondent Department on 29.03.2000. He further submits that appointment on compassionate ground is a concession and it cannot be considered as a regular recruitment process. In this regard, the learned Additional Government Pleader relied on the decision of a Division Bench of this Court reported 2016 (5) CTC 125 [The Inspector General of Prisons Vs. P.Marimuthu].

12. Heard submissions advanced on both sides and perused the records and decisions cited.

13. As rightly pointed out by the learned Additional Government Pleader, appointment on compassionate ground is a concession and it cannot be considered as a regular recruitment process. Further appointment under compassionate ground is to be undertaken only under the scheme issued by the Government and it cannot be granted in a routine manner. The principles in this regard is settled and the law laid down by a Division Bench of this Court in the decision reported in 2016 (5) CTC 125, has been referred by a learned Single Judge in W.P.No.19021 of 2017 dated 26.07.2017. For better reference, paragraph 37 of the Judgment reported in 2016 (5) CTC 125 [The Inspector General of Prisons Vs. P.Marimuthu], is extracted as under:-

"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."

14. In view of the legal principles laid down by this court in the judgment cited supra, this court find no reason to interfere with the impugned order. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Director General
Highways Department
PWD Complex, Kamarajar Salai
Chepauk, Chennai-600 005
 - 2.Chief Engineer (Construction and Maintenance)
Highways Department
PWD Complex, Kamarajar Salai
Chepauk, Chennai-600 005
 - 3.The Divisional Engineer
Highways Department
Building and Maintenance Office,
Tiruvannamalai 606 601
- +1 cc to M/s.Karthik Mukundan, Advocate, Sr.No. 10657
+1 cc to The Government Pleader, Sr.No. 11359

WP NO.25936 of 2014

SSV(CO)
CSL/07.06.2019

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