

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.2220 of 2019

J.Shoba

.... Appellant

-vs-

1. The Director General of Police/
Inspector General of Prisons (I/c)
O/o. Director General of Prisons
Egmore, Chennai - 8.

2. The Superintendent of Police,
Central Prison,
Thoraipadi,
Vellore.

.... Respondents

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.10112 of 2018 dated 15.03.2019 on the file of the High Court of Judicature at Madras.

W.P.No.10112 of 2018:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned orders passed by the 1st respondent vide No. 15277/ ES /2/2013 dated 1.12.2017 and quash the same and direct the respondents to provide suitable employment to the petitioner on compassionate ground.

For Appellant : Mr.S.N.Ravichandran
For Respondents : Mrs.A.Sri Jeyanthi
Special Government Pleader

J U D G E M E N T

[Judgement of the Court was delivered by P.T.ASHA,J.]

The above Intra-Court appeal is filed by the Writ petitioner and the challenge is to the order dated 15.03.2019 in W.P.No.10112 of 2018. The facts in brief necessary for disposal of the above Writ Appeal are as follows:

2. The appellant's father one Jayamalar who was working as Junior Assistant in the Central Prison, Vellore died in harness on 18.11.1992. It is the case of the appellant that on his death her mother Pournami had made an application for compassionate appointment on 07.12.1992. Since there was no response to the same she had addressed a representation to the District Collector, Vellore on 09.01.1993. Thereafter on 07.10.1993 the 2nd respondent had directed the appellant's mother to furnish necessary documents along with the application as per format. The same was also forwarded.

3. However in the interregnum one Tmt.Gaja claimed to be the 1st wife of the father of the appellant and there were legal proceedings between the appellant's family and the said Gaja and her children in S.O.P.No.16 of 1993 which was the application for Succession certificate filed by the appellant's mother on the file of the Sub-Court, Vellore. The said Gaja and her son J.Ravindran had filed O.S.No.106 of 1995 for a declaration that she was legally wedded by the appellant's father. By Judgement and Decree dated 29.09.1997 the Sub Court, Vellore declared that the said Gaja, Ravindran, the appellant and her sister were the legal heirs of the deceased Jayamalar. It was however declared that the appellant's mother was not the legally wedded wife of the said Jayamalar. This Judgement and Decree was confirmed by the Principal District Judge, Vellore by Judgement and Decree dated 11.11.2002 in A.S.No.25 of 1998. Thereafter the death benefits were disbursed to the appellant's mother, the said Gaja and Ravindran and the pension was paid to said Gaja, the appellant till she attains 25 years of age, appellant's sister J.Vinushree till she attains 25 years of age and her youngest sister T.Bhavani was receiving the same.

4. The appellant would contend that after the Judgement in O.S.No.106 of 1995 her sister had also made a request for compassionate appointment in the year 1998 since her mother's application for compassionate appointment could not be processed in view of the said Judgement. However, the appellant's sister died and thereafter the appellant had made a request for compassionate appointment by letter dated 10.11.2003. On 20.11.2003 she was asked to bring all the documents. The said application was returned on 14.01.2004 on the ground that the no objection from all the other legal heirs had not been obtained. Ultimately by order dated 23.05.2012 the said application for compassionate appointment was rejected by the respondents. Challenging the same the appellant had filed W.P.No.23667 of 2013. The writ Court by order dated 10.02.2019 was pleased to allow the Writ Petition, quashing the impugned order and remitting the same back to the 1st respondent for fresh consideration.

5. After the receipt of the order the same has been communicated to the 1st respondent vide the appellant's counsel letter dated 22.04.2017. Since no orders were passed the appellant was constrained to issue contempt notice dated 11.11.2017. Thereafter by order dated 01.12.2017, the 1st respondent once again rejected the application by stating that the appellant was aged only 11 years at the time of her father's death and that the application has been filed much beyond the period of 3 years from the date of death of the Government Servant.

6. It is aggrieved by this order that the appellant had moved the Writ Petition. The order of which is the subject matter of this appeal.

7. The writ Court by order dated 15.03.2019 had simply dismissed the Writ Petition on the ground that the application for compassionate appointment had been made nearly 26 years after the death of the deceased employee. Aggrieved by the said order the appellant has moved this Intra-Court Appeal.

8. Heard Mr.S.N.Ravichandran learned counsel for the appellant and Mrs.A.Sri Jeyanthi, Learned Special Government Pleader for the respondents.

9. The 1st respondent while passing the order has simply observed that the application for compassionate appointment has been made much beyond the period of 3 years. However the 1st respondent had not considered the fact that within a few days of the death, her mother had made an application for compassionate appointment for herself. It was only on account of the pendency of certain legal proceedings that the same could not be taken forward. Thereafter, when the Court had declared that the appellant's mother was not the legally wedded wife the appellant's sister had moved an application. While her application was pending consideration she had passed away and thereafter the appellant had sought compassionate appointment for her. These factors have not been considered by the respondents. It is also seen that the respondents by their letter dated 20.11.2003 had directed the appellant to furnish documents and the same has also been complied with. It is also seen that the son of the 1st wife J.Ravindran has also died and therefore the appellant appears to be the only applicant for eligible compassionate appointment.

10. In the light of the above, the order dated 01.12.2017, is set aside. The 1st respondent is directed to reconsider the matter on merits and pass order within three months.

11.The Intra Court appeal is allowed by setting aside the order passed by the writ Court. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Director General of Police/
Inspector General of Prisons (I/c)
O/o. Director General of Prisons
Egmore, Chennai - 8.

2.The Superintendent of Police,
Central Prison,
Thoraipadi,
Vellore.

+1 CC to Mr.S.N.Ravichandran, Advocate sr 70503.
+1 CC to Govt. Pleader sr 70855.

W.A.No.2220 of 2019

RR(CO)
SP(01/11/2019)

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