

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3776 of 2019

P.Senthil Kumar .. Appellant/Petitioner

Vs.

1. The District Collector
Cuddalore District
Cuddalore.

2. The Tahsildhar
Thittagudi Taluk
Cuddalore District.

... Respondents/Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 6.3.2019 passed by the learned Single Judge in W.P.No.6225 of 2019.

Prayer WP No.6225 of 2019 : This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of certiorari mandamus, to call for the records in Na.Ka. A1/ 3146/ 2016 dated 21.07.2016 on the file of the 1st respondent and quash the same as illegal, irregular and without jurisdiction and further direct the respondent to provide petitioner an appointment

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.N.Srinivasan
Addl. Government Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

This appeal questions the correctness of the impugned judgment dated 6.3.2019, whereunder the learned Single Judge has held that the appellant's claim for compassionate appointment cannot be considered in the background that his father died on

26.1.1993 and the application submitted by the mother of the appellant in 1994 was not considered, whereafter the appellant had no right to claim this appointment inasmuch as, if the mother was alive, the appellant's claim in the year 2007 is hit by laches.

2. The background of the dispute is that the appellant's father late Periyasamy was working as a Village Assistant, which post has been described as a Village Guard in terms of the Tamil Nadu Village Servants Service Rules, 1980 (for brevity, "the 1980 Rules") . The appointment order of the deceased employee indicates that he had been appointed against a permanent vacancy by the Tahsildar, Tittakkudi, on 8.4.1986. He had died, admittedly, in 1993. The application for compassionate appointment is stated to have been moved by the widow of the employee, namely, the mother of the appellant, in the year 1994.

3. The appellant moved a representation for appointment, but the same was not considered and he was informed that no such application was pending before the Collector. However, a memorandum was issued on 21.7.2016 on behalf of the District Collector, Cuddalore, that since the appellant's father was a temporary Village employee, compassionate appointment could not be offered to the appellant. The request for compassionate appointment was, therefore, rejected.

4. The appellant then approached the State Government and a letter was issued to the District Collector on 4.10.2017 indicating that the appellant's father was working as a permanent employee and that if he fulfills other requirements, the Collector shall consider as to whether the appellant can be granted appointment on compassionate grounds or not and if required, an appropriate proposal can be sent to the Government.

5. The District Collector again rejected the claim on the same grounds that the appellant could not be offered compassionate appointment as it could be done only in the case of permanent employees.

6. Aggrieved, the appellant preferred the writ petition giving rise to the present appeal. The learned Single Judge has observed that the consideration of appointment on compassionate basis is only in the nature of concession and it does not create a vested right. The learned counsel contends that this recital in the order is contrary to law and there being no assessment about the penury conditions of the appellant, there was no occasion for the learned Single Judge to have declined the relief.

7. The learned Single Judge in paragraph (20) of the impugned judgment noted the fact of long passage of time after the death of the appellant's father in 1993 and came to the conclusion that this lapse of considerable time also disentitled the appellant for any relief and consequently dismissed the writ petition.

8. Learned counsel for the appellant contends that the entire approach of the District Collector as well as that of the learned Single Judge are erroneous, inasmuch as in view of the provisions contained in the 1980 Rules read with the Revenue Standing Order 147, the appellant's father was appointed as a permanent employee and, therefore, inspite of the letter of the Government, the assumption by the learned Collector that appointment could not be given to the heir of a temporary employee is erroneous.

9. We find from the record that the appellant's father had been appointed against a permanent vacancy, which is evident from the appointment order dated 8.4.1986 and the observations made by the State Government in the letter dated 4.10.2017.

10. The argument of the learned counsel for the appellant is that the Collector could not have disobeyed or overlooked the directions of the State Government. It is here that we do not find ourselves in agreement with the argument advanced, inasmuch as, it is undisputed that the 1980 Rules are the Rules that are applicable to the controversy. The method of recruitment prescribed in Rule 3 thereof is through direct recruitment. A person aggrieved by an order of appointment is entitled to appeal to the Revenue Divisional Officer and the same is subject to any further revision by the Collector, who, of his own motion or on the application of the person aggrieved, is empowered to revise the order passed by the Revenue Divisional Officer. The scheme of the 1980 Rules, therefore, leaves no room for doubt that there is a complete machinery provided for redressal to an aggrieved person. The said Rules nowhere indicate the intervention of the State Government at any stage.

11. Learned counsel for the appellant has urged that the Tamil Nadu Board of Revenue Abolition Act, 1980 envisages the taking over of powers by the State Government upon the abolition of the Board of Revenue and, therefore, in the hierarchy of the Revenue Officials, namely, the Revenue Divisional Officer and the Collector, the State Government can assume and exercise its authority in such matters as well.

12. We cannot accept this proposition for the simple reason that the 1980 Rules do not in any way either by inference or by incorporation confer any such power on the State Government to

take any action in a matter arising out of the service conditions of the Village Servants as defined and controlled under the 1980 Rules. The letter issued by the State Government on 4.10.2017 may at best be advisory, but it cannot be said to be binding when the statutory rules are in place. The administrative letter dated 4.10.2017 issued by the Government, therefore, cannot override the codified provisions of the 1980 Rules that confer power either on the Revenue Divisional Officer or on the Collector, as referred to under the said Rules. Interpreting it otherwise would violate the hierarchy of legislation where a statutory rule cannot be allowed to be overridden by an executive advisory in the shape of an administrative communication. We are, therefore, not persuaded to accept the argument on behalf of the appellant that the letter of the State Government dated 4.10.2017 was binding on the District Collector. We are of the firm opinion that the Collector had the authority to take an independent decision and, accordingly, the order dated 6.10.2017 passed by the Collector being in conformity with the 1980 Rules, the same cannot be interfered with.

13. The claim of the appellant could have been considered had he approached within time, but, in the instant case, he appears to have moved his representation in 2007, while the application of his mother was still pending, who does not seem to have been persuaded her application. The ultimate conclusion, therefore, of the learned Single Judge not to entertain the claim after such a lapse of time does not suffer from any infirmity. Admittedly, the father of the appellant died in 1993 and it is after almost a quarter of a century that this Court was called upon to examine the issue. In the background aforesaid, the refusal to exercise discretion by the learned Single Judge does not warrant any interference in this intra-court appeal, which is accordingly rejected. No costs.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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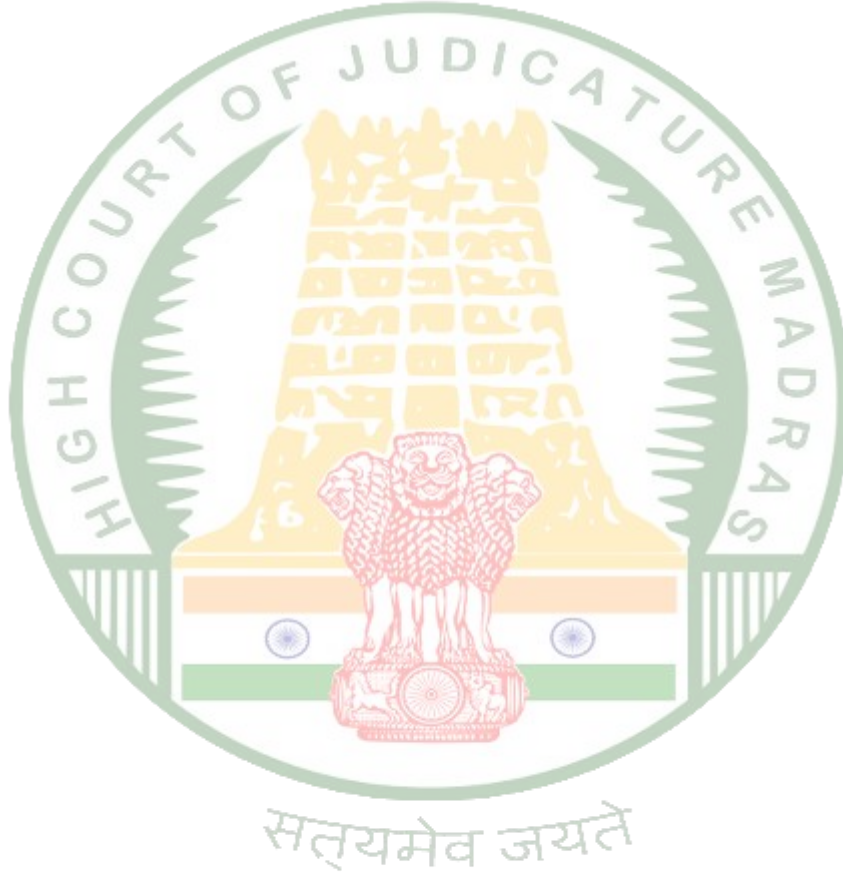
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+lcc to Mr.V.Raghavachari, Advocate SR.No.98198

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VGII(CO)
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