

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.07.2019

CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN  
and  
The Honourable Ms.JUSTICE P.T.ASHA

W.A.No.553 of 2017

C. Varadharajan

..Appellant/Petitioner

vs

1. The State of Tamil Nadu,  
represented by Secretary to Government,  
Labour and Employment Department,  
Secretariate,  
Chennai-600 009.

2. The Principal Chief Conservator of Forests,  
No.1, Jeenis Road,  
Saidapet,  
Chennai- 600 015.

3. The Conservator of Forests,  
Salem Division,  
Salem.

.. Respondents/Respondent

Prayer: Writ Appeal is filed under clause 15 of the Letter  
Patent praying to set aside the order dated 09.09.2014 made in  
W.P.No.19555 and pass other relief.

For Appellant : Mr. S.Gunalan

For Respondents : Mrs. A. Sriyanthi, SPL.G.P. for R1

Mrs. Thangavardhana Bhalakrishnan,  
Government Advocate for R2 and R3.

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JUDGMENT

(Judgment of the Court was delivered by P.T.ASHA, J)

The above intra-court appeal is filed challenging the order  
in W.P.No.19555 of 2012 in and by which the appellant's request  
for compassionate appointment has been rejected. Such a  
rejection had been made after the respondents had processed the

application of the appellant, found him fit in all respects for the post of Forester and consequential recommendation made by the Assistant Forest Officer, Salem to appoint him in the Forest Department.

2. It is necessary to allude to the brief facts for more fully appreciating the issue on hand.

The petitioner's father one Chellaiah was working as a driver with the Forest Department. He had died in harness on 15.09.1990 leaving behind his wife and son, the appellant herein. The appellant was then aged about 10 years. The mother had made an application on 26.08.1992 seeking compassionate appointment for her son. From the communication of the second respondent to the third respondent, it is seen that the appellant was asked to appear for a physical examination before the Assistant Forest Officer, Salem. The Assistant Forest Officer, Salem by his letter dated 12.12.2001 had opined that the appellant possessed the necessary physical attributes for the post for Forester. Thereafter the recommendation was forwarded by the third respondent to the second respondent. The application, thereafter, appears to have been kept in cold storage. By order dated 08.02.2010, nearly 9 years after the examination of the physical parameters of the appellant, the first respondent had rejected the application for compassionate appointment on the ground that the application has not been made within three years as contemplated in G.O.Ms.No.202 Labour and Employment Department 8.10.2007. Challenging the said order, appellant had filed W.P.No.19555 of 2012.

3. The learned Single Judge by order dated 09.09.2014 was pleased to dismiss the said Writ Petition. The learned Judge had relied on the Judgment reported in (2011) 4 SCC 209, Bhawani Prasad Sonkar Vs. Union of India and held that the appellant was not entitled to the relief he had claimed. The learned Judge has also relied on the Judgment of this Court reported in (2011) 7 MLJ page 420, "C. Dilli Babu Vs. State of Tamil Nadu represented by its Secretary Public Works Department and others" wherein a Single Judge of this Court has held that the limitation for making the application would be applicable only in cases of death of the Government servant after 26.06.1995. The Learned Judge has taken this decision since the appellant had not made an application within a period of three years from the date of attaining majority. Challenging the said order, the appellant is before this Court.

4. Mr. Paramasivam Doss, learned counsel appearing on behalf of the appellant would contend that even as early as in the year 1992 as soon as the appellant's father had died, his mother had made an application for compassionate appointment.

That apart the appellant was called upon to produce all the documents besides appearing for physical examination in the year 2001 itself and the impugned order has been passed nearly nine years thereafter in 2010. He would submit that the application has been made well within the period of three years and renewed once again after the appellant had attained majority, pursuant to which, he was called upon to submit himself for physical examination. The learned counsel would therefore contend that in the instant case, the death was in the year 1990 before the cut of date and therefore the learned Judge ought to have allowed the Writ Petition and set aside the order dated 08.02.2010.

5. From the perusal of the papers, it is seen that the mother of the appellant had made the first application on 26.08.1992 wherein she had made an appeal that her minor son should be employed on completing his education. Therefore it is clear that the first application has been made within three years. No doubt the appellant was a minor then. Thereafter on his attaining majority, the request was renewed and in pursuance of the said request the appellant was called upon to attend the physical examination and he was directed to produce all his credentials. The 3rd respondent had also favorably recommended the case of the appellant stating that he was physically fit for the post of Forester and that he had possessed all the necessary qualification required for the post. This application has been kept in cold storage by the second respondent for over nine years and thereafter the impugned order has been passed. The application has been rejected only on the ground that the request for compassionate appointment has not been made within a period of three years from the date of his father's death. As already narrated, the first application was made on 26.08.1992 and thereafter it was renewed when the appellant attained the age of majority. That apart as pointed out by the learned counsel for the appellant, the three year cap occurred only by reason of the Government order in G.O.Ms.No.120 Labour and Employment dated 26.06.1995 wherein for the first time the time limit for making application for compassionate appointment had been introduced. Prior to the said date there was no such limitation.

6. In view of the above facts, we are of the considered view that the order of the learned Single Judge is erroneous and is liable to be set aside. While allowing the writ appeal, we direct the respondents to consider the application of the appellant taking into account the fact that the first request was made immediately after the death of his father and renewed on his attaining majority. The recommendation dated 11.01.2002 of the second respondent certifying that the appellant was fit in all respects for the post of Forester should also be taken into account while considering the application. The said

exercise shall be completed within a period of two months from the date of receipt of a copy of this Judgment. No costs.

Sd/-  
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

mrn

To,

1. The Secretary to Government,  
The State of Tamil Nadu,  
Labour and Employment Department,  
Secretariate,  
Chennai-600 009.

2. The Principal Chief Conservator of Forests,  
No.1, Jeenis Road,  
Saidapet,  
Chennai- 600 015.

3. The Conservator of Forests,  
Salem Division,  
Salem.

+1cc to Special Government Pleader (Forest) SR.No.58218

+1cc to Government Pleader, High Court, Madras SR.No.58578

W.A.No.553 of 2017

CA (CO)  
GMY (28/08/2019)

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