



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.09.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD).No.19909 of 2019

WEB COPY

M.Melbha

... Petitioner

Vs.

1.The Secretary to Government,
Home Department (Courts)
Secretariat,
St.George Fort,
Chennai.

2.The Principal District & Sessions Judge,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, by calling for the records in proceedings Roc.No.106/2019-A dated 09.07.2019 on the file of the 2nd respondent and quash the same as it is illegal and injustice and consequently direct the respondents to appoint the petitioner on compassionate ground.

For Petitioner : Mr.N.Sivakumar
For R1 : Mr.A.Muthukaruppan
Additional Government Pleader
For R2 : Mr.Palaramasamy

O R D E R

(Order of this Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.N.Sivakumar, learned counsel appearing for the petitioner, Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the first respondent and Mr.Palaramasamy, learned counsel appearing for the second respondent.

2.By consent of either side, this writ petition is taken up for disposal.

3.The petitioner is before this Court challenging the order passed by the second respondent/Principal District and Sessions Judge (Full Additional Charge), Kanyakumari District, Nagercoil, whereby the petitioner's application for grant of appointment on compassionate grounds as her mother was medically invalidated, has



been rejected.

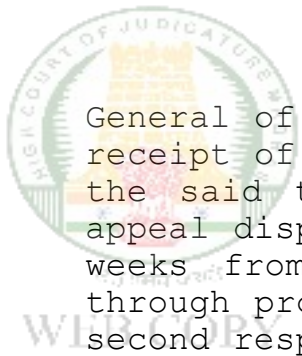
4.The learned counsel appearing for the petitioner placed reliance on a recent decision of the Hon'ble Supreme Court in the case **STATE OF HIMACHAL PRADESH AND ANOTHER V. SHASHI KUMAR** reported in **(2019) 3 Supreme Court Cases 653** and referred to Paragraph No.36 of the judgment, which reads as follows:

"We are not impressed with the submission that delay should not be taken into account since Para (8) of the policy /scheme contemplates that in a situation where all the dependent children of the deceased employee have yet to attain the age of majority, the time-limit for submission of an application is extended until the first of the children attains the age of twenty-one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including State of J&K v. Sajad Ahmed Mir and Local Admn. Deptt. v. M.Selvanayagam."

5.It is the submission of the learned counsel for the petitioner that the petitioner is aged about 19 years as on date and the petitioner's mother suffered from polio attack on both legs. As a result of which, she could not get married earlier and she was married only at the age of 36 years, as a result of which, on the date of her invalidation, ie on 31.03.2012 two children were minors viz., the petitioner herein and her sister. As of now, the petitioner has crossed 18 years of age and it is the submission of the learned counsel for the petitioner that the age should not be computed from the date on which the petitioner's mother was medically invalidated. It is further stated that the petitioner's father is also unemployed and his family is living below the poverty line.

6.As against the order passed by the second respondent/ Principal District and Sessions Judge, appeal lies to the High court and in our considered view, the appeal remedy is not only effective, but also efficacious. Therefore, necessarily the petitioner should avail such remedy and if aggrieved can approach this Court at a later point of time. The learned counsel for the petitioner submitted that the petitioner's family is suffering for want of financial support and the petitioner is willing to file an appeal and prays for a direction to expedite the disposal of the appeal.

7.Considering these facts, we dispose of this writ petition by directing the petitioner to file an appeal before the Registrar



General of this Court within a period of two weeks from the date of receipt of a copy of this order. If such appeal is presented within the said time, the Registrar General shall endeavour to get the appeal disposed of at the earliest, preferably within a period of 8 weeks from the date on which the appeal petition is presented, through proper channel. On receipt of the said appeal petition, the second respondent is directed to forward the same to the High Court as expeditiously as possible preferably within a period of one week from the date on which the appeal petition is received in full form. No costs.

8. Since the Registrar General of this Court is not a party to the writ petition, the Registry is directed to mark a copy of this order to the Registrar General, High Court, Madras.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Secretary to Government,
Home Department (Courts)
Secretariat,
St. George Fort,
Chennai.

2. The Principal District & Sessions Judge,
Nagercoil,
Kanyakumari District.

3. The Registrar General,
High Court, Madras

+1 CC to M/s.N.SIVAKUMAR, Advocate (SR-87099[F] dated 17/09/2019)

+1 CC to M/s.PALARAMASAMY, Advocate (SR-87491[F] dated 18/09/2019)

+1 CC to M/s.SPL GP (SR-87550[F] dated 18/09/2019)

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W.P. (MD) .No.19909 of 2019
17.09.2019

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