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W.A.(MD)No.906 / 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.906 of 2018

V.Vinoth

... Appellant/Petitioner

Vs.

1.The Principal Chief Engineer,
Water Resources cum Chief Engineer (Public),
Public Works Department,
Chepauk, Chennai.

2.The Chief Engineer,
Water Resources Department,
Madurai Region,
Madurai.

3.The Superintendent Engineer,
Water Resources Department,
Lower Vaigai Basin Circle,
Sivagangai.

4.The Executive Engineer,
Public Works Department / Water Resources Department,
Lower Vaigai Basin Circle,
Paramakudi,
Ramanathapuram District.

.. Respondents/ Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to allow this writ appeal by setting aside the order made in W.P.(MD)No.20541 of 2017 dated 18.01.2018.

Prayer in WP(MD). 20541/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records relating to the Impugned letter .No.E2/763/2017 dated 12.06.2017 on the file of the 4th respondent and quash the same as illegal and directing the 1st respondent to appoint the petitioner as a Junior Assistant or any other competent post under him on compassionate ground and within the time fixed by this Honble court.



For Appellant
For Respondents

: Mr.G.Murugendran
: Mr.A.K.Baskara Pandian
Special Government Pleader

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JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.G.Murugendran, learned counsel for the appellant and Mr.A.K.Baskara Pandian, learned Special Government Pleader for the respondents. By consent on either side, this writ appeal is taken up for final disposal.

2. This appeal by the writ petitioner is directed against the order, dated 18.01.2018 in W.P.(MD)No.20541 of 2017, which was filed challenging the order passed by the fourth respondent dated 12.06.2017 rejecting the application made by the appellant for grant of appointment on compassionate ground.

3. The appellant's father was employed in the respondent Department and died in harness on 21.12.2004. The appellant's mother submitted an application on 09.09.2006 seeking appointment on compassionate ground. The fourth respondent, Head of the Department by communication dated 26.06.2009, informed the appellant's mother stating that to enable the department to offer an appointment to her son on compassionate ground, his son should complete 18 years of age and she has to produce copies of the sixteen documents mentioned in the said communication. The said communication was received by the mother of the appellant and wrongly understood that they should wait till the appellant attains the age of 18. On attaining the age of majority, another representation was made to grant of appointment, which has been rejected on the ground that at the time of demise of the employee, the appellant was minor and cannot be granted appointment on compassionate ground. While passing rejection order there is a reference to a Governance Letter No.86, dated 04.05.2010.

4. The fact that the appellant's mother was asked to wait till her son attaining 18 years of age has not been disputed by the Department. However, the clarification issued by the Government was only in the year 2010, whereas the date of demise of the appellant's father was in the year 2004. The argument of the learned Special Government Pleader is that the clarification of the Government Letter would date back to the Original Government Order.

5. The need to give a clarification arose on account of certain queries being raised by various Departments. Therefore, until it was clarified by the Government on 04.05.2010, it is deemed



that the earlier Government Letter were being implemented and the cases were considered as and when the candidate attains the age of majority. Therefore, the appellant's case could not have been none suited as clarification was issued in the year 2010.

6. We are aware of the legal position laid down by the Hon'ble Supreme Court in the matters pertaining to appointment on compassionate ground. Some of those decisions have been noted by the learned Single Bench in the impugned order. However, the peculiar facts and circumstances of the present case has convinced us to take a different approach in the instant appeal. This is due to the stand taken by the Department. Had the Department intimidated the appellant's mother that instead of her son, she would be eligible to apply subject to fulfilment of qualification, then probably the widow of the employee would have applied. It is also note worthy to mention that the application filed by the appellant's mother was well within the period of three years. The learned counsel for the appellant submitted that the mother of the appellant is a physically challenged person and the family is in indigent circumstances.

7. Thus considering the peculiar facts and circumstances of the case and in the light of the stand taken by the Department in their communication, dated 26.06.2009, we are inclined to grant relief to the appellant. Accordingly, this writ appeal is allowed. The order passed by the learned Single Bench is set aside and the respondents are directed to consider the application filed by the appellant and grant appointment on compassionate ground subject to fulfilment of other conditions. This direction be complied with by the respondents within a period of four months from the date receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal Chief Engineer,
Water Resources cum Chief Engineer (Public),
Public Works Department,
Chepauk, Chennai.



2.The Chief Engineer,
Water Resources Department,
Madurai Region,
Madurai.

3.The Superintendent Engineer,
Water Resources Department,
Lower Vaigai Basin Circle,
Sivagangai.

4.The Executive Engineer,
Public Works Department / Water Resouces Department,
Lower Vaigai Basin Circle,
Paramakudi,
Ramanathapuram District.

+1 CC to MR.G. MURUGENDRAN, Advocate (SR-102235[F]dated
28/11/2019)

+1 CC to SPL GP (SR-102794[F] dated 29/11/2019)

ORDER MADE IN
W.A. (MD) No. 906 of 2018
28.11.2019

VB (07.01.2020) 4P 7C