



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.22443 of 2019

and

W.M.P (MD) .No.19225 of 2019

WEB COPY

A.Illayaraja

...Petitioner

-Vs-

1.The Commissioner of Municipal Administration
Ezhilagam
Chepauk, Chennai 5

2.The Commissioner
Kumbakonam Municipality
Kumbakonam, Thanjavur District

3.The Assistant Director
Local Fund Audit
Municipal Pension
Kuralagam, Chennai 600 108

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 2nd respondent made in Na.Ka.No.8925/2019/H1, dated 16.08.2019 and quash the same and consequently, direct the respondents to settle the terminal benefits of the deceased employee namely, V.Arasan, to the petitioner with interest and to provide compassionate appointment to the petitioner.

For Petitioner: Mr.C.Ramesh

For R1 & R3 : Mr.V.R.Shanmuganathan
Special Government Pleader

For R2 : Mr.M.Rajarajan
Government Advocate

ORDER

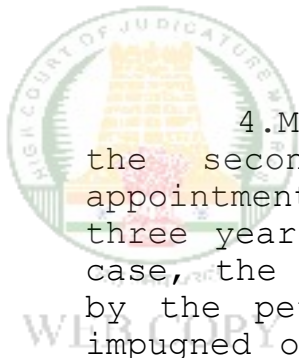
This Writ Petition has been filed to call for the records relating to the proceedings of the 2nd respondent made in Na.Ka.No.8925/2019/H1, dated 16.08.2019 and quash the same and consequently, direct the respondents to settle the terminal benefits of the deceased employee namely, V.Arasan, to the petitioner with interest and to provide compassionate appointment to the petitioner.

2.The petitioner is an adopted son of one Arasan, who was working as Sweeper in the second respondent Municipality. While in service, the petitioner's father died on 11.02.2009 leaving behind the petitioner and his grandmother (mother of the deceased) as his



legal heirs. At the time of death of employee, the petitioner was minor and aged about 10 years. The petitioner's grandmother made application for settlement of terminal benefits. The second respondent after verifying the documents, sanctioned the terminal benefits including the family pension by proceedings, dated 15.04.2014 to the grandmother of the petitioner. In the meanwhile, the petitioner's grandmother (Veerammal) died on 11.12.2012. Due to the same, the second respondent did not release the terminal benefit payable to the deceased employee. Hence, Guardian O.P.No.150 of 2015 was filed before the Principal District Court, Thanjavur to appoint one Shanthi as Guardian of the petitioner and the said petition was ordered on 11.02.2016, appointing the said Shanthi as Guardian of the petitioner. The petitioner's guardian sent a representation to the respondents to settle the terminal benefits including the pension. As per Pension Rules, minor children are entitled for family pension and in case, a male, upto the age of 25 years. By an letter dated 03.09.2015, the second respondent Municipality informed that after the appointment of guardian by the Principal Subordinate Court, a proposal for the pension will be sent to the Director, Local Fund Audit, Chennai. But, after attaining majority, the petitioner made representation during March-2017 seeking terminal benefits of his father and as well as seeking compassionate appointment. The second respondent by letter dated 28.06.2018, directed the petitioner to produce the documents in original including the combined certificate issued by the Tahsildar. Accordingly, the petitioner submitted all the certificates including the combined certificate issued by Tahsildar in September-2018. On receipt of the documents, the second respondent recommended the case of the petitioner to the first respondent for appointment of petitioner as Junior Assistant or Revenue Assistant. No order was passed by the first respondent. While so, suddenly, the second respondent by an impugned order rejected the claim of the petitioner on the ground that the petitioner has not made an application within three years from the date of death of the employee. Challenging the said order, the petitioner has come up with the present writ petition.

3.The learned counsel appearing for the petitioner submitted that the petitioner was minor aged about 10 years at the time of death of his father and when he became major, made an application in March 2017. The second respondent has directed the petitioner to produce necessary documents and recommended the appointment of the petitioner as Junior Assistant or Revenue Assistant, erred in rejecting the claim of the petitioner. The petitioner is entitled for appointment on the principles of doctrine of promissory estoppel. The second respondent is liable to settle the terminal benefits together with interest at 18% per annum for the delay in payment.



4. Mr. M. Rajarajan, learned Government Advocate appearing for the second respondent, submitted that the application for appointment on compassionate ground must be made within a period of three years from the date of death of the employee. In the present case, the employee died on 11.02.2009 and the application was made by the petitioner only in March-2017. In view of the same, the impugned order passed by the second respondent is valid and legal and hence, prayed for dismissal of this Writ petition.

5. Heard Mr. C. Ramesh, learned counsel appearing for the petitioner, Mr. V. R. Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 and 3 and Mr. M. Rajarajan, learned Government Advocate appearing for the second respondent.

6. From the materials on record, it is seen that the father of the petitioner, who was working as Sweeper died on 11.02.2009. The petitioner was 10 years old, at the time of death of his father. After attaining majority, the petitioner applied for appointment on compassionate ground in March 2017. The second respondent did not reject the said application on the ground of delay that the said application made beyond three years of death of the employee. On the other hand, the second respondent asked him to produce all the documents including the combined certificate issued by the Tahsildar and on receiving the documents, recommended the case of the petitioner to the first respondent for appointment of the petitioner as Junior Assistant or Revenue Assistant. It is well settled that the application made beyond three years of the death of the deceased is not maintainable and the legal heirs of the deceased should not be entitled for compassionate appointment. The reason behind such limitation is, the family of the deceased must be given immediate relief. In the present case, the petitioner was minor, at the time of death of his father, the petitioner's mother pre-deceased. The petitioner was 10 years old at the time of death of his father. His grandmother died on 11.12.2012 and on attaining the majority, the petitioner gave representation for appointment of compassionate ground. The second respondent received the application and directed the petitioner to produce the documents and recommended the case of the petitioner to the first respondent for appointment as Junior Assistant or Revenue Assistant. From the combined certificate issued by the Tahsildar, it is seen that the petitioner is in indigent circumstances even now.

7. Considering all the materials on record, the respondents 1 and 2 are directed to consider the claim of the petitioner for appointment on compassionate ground and pass orders, appointing the petitioner in the post, to which he is eligible.

8. At this juncture, the learned counsel for the petitioner submitted that the second respondent has not settled terminal benefits of the deceased employee, even though the petitioner and



the grandmother made applications for settlement of terminal benefits, after the death of employee.

9. Mr.Rajarajan, learned Government Advocate submitted that the eligible entire terminal benefits will be paid to the petitioner, if not already paid.

10. In view of the above, the respondents are directed to settle the terminal benefits including the family pension within a period of four weeks from the date of receipt of a copy of this order, if the same has not been already disbursed.

11.With the above direction, this Writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

msa
To

1.The Commissioner of Municipal Administration
Ezhilagam
Chepauk
Chennai 5

2.The Commissioner
Kumbakonam Municipality
Kumbakonam
Thanjavur District

3.The Assistant Director
Local Fund Audit
Municipal Pension
Kuralagam
Chennai 600 018

+1 CC to M/s.SPL GP (SR-96664[F] dated 07/11/2019)

+1 CC to M/s.M.RAJARAJAN, Advocate (SR-96773[F] dated 07/11/2019)

+1 CC to M/s.R.MURALI, Advocate (SR-96798[F] dated 07/11/2019)

SMA/17/12/19/3P/7C

W.P. (MD) No.22443 of 2019 and

W.M.P (MD) .No.19225 of 2019

06.11.2019