



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

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W.P (MD)No.11331 of 2016
and
WMP (MD)No.9911 of 2017

A.Mani

.. Petitioner

Vs.

1.The District Collector,
Tiruchirapalli.

2.The Tahsildar,
Thuraiyur Taluk,
Tiruchirapalli District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of the impugned order of the 1st respondent in MUMU/A4/1404/2016 Dt 29.3.2016 and quash the same and pleased to direct the 1st respondent to reconsider the petitioner's application for compassionate appointment and give a suitable job for her based on her eligibility and qualification as per law.

For Petitioner : Mr.R.S.Sivaram

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader

ORDER

This writ petition has been filed seeking to quash the impugned order of the 1st respondent in MUMU/A4/1404/2016, dated 29.03.2016 and to direct the 1st respondent to reconsider the petitioner's application for providing compassionate appointment.

2.According to the petitioner, his father viz., Arumugam while he was working as a Village Assistant in Vadakuvezhi Village, Thuraiyur Taluk, Tiruchirapalli District died on 01.12.2002, leaving behind him, his wife, the petitioner and two daughters. The writ petitioner had submitted her application on 19.02.2003, seeking compassionate appointment and the same is filed within a period of three years, as per G.O.Ms.No.202, Labour and Employment Department, dated 08.10.2007. The first respondent, without considering the fact that the aforesaid application was filed within the prescribed time,

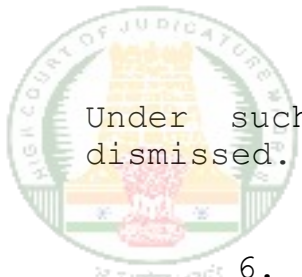


has rejected the petitioner's claim for appointment on compassionate ground and therefore, the petitioner is before this Court with the aforesaid relief.

3. Based on the counter affidavit filed by the first respondent, the learned Additional Government Pleader appearing for the respondents submitted that the petitioner's father viz., Arumugam died on 01.12.2002 and he had three daughters and they had already given in marriage in the year 1996 and 2000, while the deceased employee was in service. The petitioner submitted her application on 17.04.2006 for providing appointment on compassionate ground, subsequent to the death of her father. The second respondent processed the said application and sent his report to the first respondent, after perusal of the report, the first respondent has passed the impugned order, rejecting the petitioner's claim stating that the application was submitted beyond three years period and therefore, she is not entitled for getting appointment on compassionate ground and thus, the impugned order passed by the first respondent is valid under law.

4. Learned counsel appearing for the petitioner submitted that the application was submitted on 19.02.2003, before the second respondent, for providing employment on compassionate ground, on the death of her father, within a period of three years, as per the Government Order. But the first respondent without considering the same, rejected the application stating that the application is filed beyond the period of three years.

5. From the records produced by the second respondent, it is seen that the petitioner submitted an application on 25.04.2006 to the District Collector, Tiruchirapalli and the Revenue Divisional Officer, Musiri has endorsed the said application on 23.05.2006 and directed the Tahsildar, Thuraiyur to take necessary action on the petitioner's representation. The Tahsildar, in turn, directed the petitioner to appear for enquiry and produce relevant records on 18.04.2006. Thereafter, based on the report submitted by the Tahsildar, Thuraiyur, the first respondent passed the impugned order, by rejecting the petitioner's claim on the ground that the said application was filed beyond three years period. Further, in G.O(Ms)No.42, dated 12.03.2007, Labour and Employment (Q1) Department, it is stated that the existing time limit of 3 years for filing application from the date of death of the Government employee shall be continued as per orders issued in G.O(Ms)No.62, L & E (Q1) Department, dated 19.07.2006. Therefore, as stated above, the petitioner has made the application beyond three years period from the date of death of her father. Thus, there is no illegality or irregularity in the impugned order passed by the first respondent.



Under such circumstances, this writ petition is liable to be dismissed.

6. On a perusal of the records, an application, dated 19.02.2003 submitted to the respondent does not support with any evidence to prove that the petitioner has sent the application on 19.02.2003. Further, the petitioner has not sent any communication or any reminder to the respondents till 17.04.2006. Thereafter, she made an application on 17.04.2006 to the respondent for providing appointment on compassionate ground.

7. Thus, the petitioner has not given any satisfactory explanation or produced any material before this Court that she submitted the application within a period of three years from the date of death of the deceased employee. Therefore, the contention of the writ petitioner is untenable and the same is not accepted.

8. The Scheme of employment assistance on compassionate ground is being a concession given, to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadwinner who had left the family in penury, the said concession can never be claimed as a matter of right. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. Further, the petitioner is debarred from seeking compassionate appointment on the ground of delay as well as in the light of the decision rendered by the Hon'ble Supreme Court in the case of **State of Himachal Pradesh and another V. Shashi Kumar** reported in **(2019) 3 Supreme Court Cases 652**. The relevant paragraphs of the said decision read as under:

"35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased

employee. This sense of immediacy is evidently lost by



the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant 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 Vs. Sajad Ahmed Mir* and *Local Administration Department Vs. M. Selvanayagam*.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place."

9. The reason behind giving compassionate appointment is just to help the family in harness to get over the immediate financial crisis due to the loss of sole breadwinner. In the present case on hand, the petitioner made an application in the year 2006 beyond the prescribed period of three years. Thus, in the light of the decision cited above, the writ petition is liable to be dismissed.

10. Before parting with the order, even though the petitioner made the said application in the year 2006 beyond the prescribed period, the authorities concerned should have passed the impugned orders within the reasonable time. But, The concerned authority had slept over the matter for a period of ten years and passed the impugned order, rejecting the claim of the petitioner by stating the reason that the said application is time barred. The action of the respondent is not appreciated by the Court, especially considering the application on compassionate ground.



11. The writ petition is dismissed with the above observations. No costs. Consequently, WMP(MD)No.9911 of 2017 is closed.

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Sd/-

Assistant Registrar (AD-II)

/ True Copy /

Sub Assistant Registrar (CS-)

To

- 1.The District Collector,
Tiruchirapalli.
- 2.The Tahsildar,
Thuraiyur Taluk,
Tiruchirapalli District.

+1 CC to M/s.SPL GP (SR-79979[F] dated 06/08/2019)

W.P (MD) No.11331 of 2016

mj

ES/01.10.2019/5P/4C