



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM:

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD) .No. 1888 of 2016

AND

WMP(MD) No.1645 of 2016

P. Mandhiramoorthi : Petitioner
Vs.

1. The Chief Engineer,
Highways Department,
Chennai - 5.
2. The Superintending Engineer,
Highways Department,
Tirunelveli.
3. The Divisional Engineer,
Highways Department,
Tirunelveli District.
4. The Assistant Divisional Engineer,
Highways Department,
Nanguneri, Tirunelveli District : Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India for issuing a Writ of Certiorarified Mandamus, calling for the orders of the first respondent's proceedings in குறிப்பாணை எண். நர் 2(1/20061/2010) நாள் : 27.07.2010 quash the same and consequently direct the respondents to appoint the petitioner on compassionate ground.

For Petitioner : Mr.V.Perumal

For Respondents : Mr. A. Muthu Karuppan,
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order passed by the first respondent's proceedings in குறிப்பாணை எண்.

<https://hcservices.ecourts.gov.in/hcservices/>



நாள் 2(1/20061/2010) நாள் : 27.07.2010 and also sought direction to the respondents to appoint the petitioner on compassionate grounds.

2. According to the petitioner, his father Late.Pandaram died on 10.12.1990, while he was in service in the respondent Department. At the time, he was aged about 8 years and he is the only legal heir of his deceased father. After the death of his father, his mother has made an application to the fourth respondent to provide an employment on compassionate ground and thereafter, he attained majority, the petitioner's mother also made a representation to the Chief Minister Special Cell on 16.11.2001 and the same was forwarded to the first respondent.

3. According to the petitioner, his mother made an application on 09.10.2000 to the fourth respondent for providing an employment to the petitioner on compassionate ground, was returned and the same was resubmitted along with some documents. Again, he has resubmitted with all required documents before the fourth respondent and the same was forwarded to the third respondent to recommend for giving an appointment, as per educational qualification. The second respondent has sent a report to the first respondent, based on the representation submitted before the respondents-3 & 4 and the same was forwarded to the first respondent. But, the request of the petitioner was rejected by the first respondent and passed the impugned order, dated 27.07.2010. The petitioner's mother made a request to relax the educational qualification which has been relaxed to the similarly placed persons. Challenging the aforesaid order, the instant writ petition is filed.

4. It is stated in the counter affidavit filed by the fourth respondent that at the time of application submitted by the petitioner's mother, the petitioner was aged only 8 years and on attaining majority, he applied again to the second respondent the same was forwarded to the first respondent on 15.06.2010. After considering various aspects, the petitioner's application was rejected on 27.07.2010. By challenging the aforesaid impugned proceedings, the instant writ petition is filed. It is further stated that the Government has only provide an employment to the deceased legal heirs of the deceased employee who is the sole breadwinner of the family. But, the present case on hand, the petitioner's application was rejected in the year 2010. Now, the petitioner made a representation to provide an employment on compassionate ground after lapse of 11 years. Therefore, the said grievance of the petitioner is belated and the same is liable to be rejected.

5. In **The Inspector of Prisons, Tiruchirapalli District, Tiruchirapalli and Anr. Vs. P.Marimuthu**, decided on 22.04.2016,
<https://hcciviljudicialservices.org/>



this Court has held as follows:

"36. In *National Institute of Technology v. Niraj Kumar Singh* reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.



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22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LRs. and Ors., (2005) 12 SCC 1].

37. Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years from the date of death, cannot be ignored. A member of the family,



otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in *Sushma Gosain v. Union of India* reported in 1989 (4) SCC 468."

<https://hcservices.ecourts.gov.in/hcservices/> 6. In the case on hand, the petitioner's application was



rejected in the year 2010. Now, the petitioner has made a representation to provide an employment on compassionate ground after lapse of 11 years. Therefore, considering the facts and circumstances of the case and in the light of the aforesaid decision of this Court, this Court is of the view that the relief sought by the petitioner cannot be granted. Hence, the present writ petition is liable to be dismissed.

7. Under the facts and circumstances of the case, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To

1. The Chief Engineer,
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3. The Divisional Engineer,
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Tirunelveli District.
4. The Assistant Divisional Engineer,
Highways Department,
Nanguneri, Tirunelveli District.

+1 CC to M/s.V.PERUMAL, Advocate (SR-80821[F] dated 09/08/2019)

+1 CC to M/s.SPL GP (SR-81233[F] dated 09/08/2019)

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