



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WEB COPY

W.P. (MD) No.327 of 2016

V.Uma Maheshwari

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.

2.The Assistant Elementary Educational Officer,
Manoor, Tirunelveli District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the first respondent in O.Mu.No.2525/A5/2015, dated 14.08.2015, quash the same insofar as applying the period of limitation is concerned and further direct the respondents to provide an employment to the petitioner under compassionate ground, within the time fixed by this Court.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.K.Chellapandian
Additional Advocate General
Assisted by
Mrs.S.Srimathy
Special Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the impugned order of the first respondent in O.Mu.No.2525/A5/2015, dated 14.08.2015, insofar as applying the period of limitation is concerned and further direct the respondents to provide an employment to the petitioner under compassionate ground, within the time limit to be fixed by this Court.

2.According to the petitioner, her father viz., K.Vellapandian was working as Headmaster in Kalakudi Union Middle School. While he was in service, he died in harness on 15.10.1994, leaving behind the petitioner's mother viz., Muthulakshmi, the petitioner's elder sister viz., Selvakumari and the petitioner, as his legal heirs. At the time of death of her father, the petitioner was a minor, aged about five months and her sister was also a minor, aged about 12 years and the petitioner's mother, who was aged about



39 years, did not possess the minimum qualification and therefore, after completing Diploma in Elementary Education in June 2014 and also after attaining majority, the petitioner made an application to the respondents on 09.06.2015, seeking employment assistance under compassionate ground. But, the said application was rejected by the first respondent on 14.08.2015, on the ground that the application was incomplete and the same was made beyond the period of three years from the date of death of the petitioner's father/employee. Hence, the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the ground for rejection of the petitioner's application by the respondent Department cannot be sustained and by relying on the judgment of this Court in **C.Dilli Babu Vs. State of Tamil Nadu, Rep. by its Secretary, Public Works Department, Chennai - 600 009 and others** reported in **2011 (7) MLJ 420**, the learned counsel for the petitioner submitted that there was no time limit for making application for employment assistance on compassionate ground on the death of the Government Servant, until the Government issued G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995. The Government prescribes the limitation of three years only in G.O.Ms.No.120. Thereafter, it was clarified by the Labour and Employment Department, by letter dated 11.10.1995, that three years limitation for making application, is applied only in the case of the death of the Government Servant, who died after 26.06.1995 and there could be no limitation, in the case of death of the Government Servant, who died prior to 26.06.1995.

4.The learned counsel appearing for the petitioner has also relied on a judgment of this Court in **S.Velraj Vs. The Superintending Engineer, Tamil Nadu Electricity Board, Tirunelveli Electricity Distribution Circle, Tirunelveli and another** [W.A.(MD) No.1400 of 2011, decided on 16.12.2015] and submitted that three years limitation cannot be applied as a straight-jacket formula in the matter of compassionate appointment and each and every case has to be approached differently, based on the facts and prayed for allowing the Writ Petition.

5.A counter affidavit has been filed by the first respondent stating that the petitioner has not submitted the application for appointment under compassionate ground within three years from the date of death of her father and she has made an application only on 09.06.2015, i.e., after a lapse of nearly 21 years from the date of death of her father viz., 15.10.1994 and therefore, the petitioner is not entitled to the relief sought for in this Writ Petition and prayed for dismissal of the Writ Petition.

6.The learned Additional Advocate General has relied upon a letter in Letter (Ms)No.202, dated 08.10.2007, issued by the Secretary to Government, Labour and Employment Department, relating to the time limit for filing applications for appointment on compassionate ground, wherein at Paragraph Nos.3 to 5, it has been stated as follows:-



3. The very purpose of giving compassionate ground appointment scheme is only to help the family of the deceased Government Servant to tide over the sudden indigent circumstances unexpectedly created by the sudden and untimely death of the Government Servant. So the appointment should, therefore be provided immediately to redeem the family in distress and the provision of compassionate appointment after a lapse of very long time defeats the very purpose of the compassionate ground appointment scheme. The Supreme Court has made critical observations with regard to this issue and that the critical issue is whether the family is in indigent circumstances. In the cases of application made after ten years, twenty years and thirty years from the date of death of the Government Servant, obviously the family cannot be considered in indigent circumstances. In view of this, the instructions issued in the reference 2nd cited could not be considered to the applicability to past cases after the lapse of 3 years; even where the Government Servant died prior to 26.6.95. In other words the applicability of the clarification issued in second letter cited was for only to past cases to cover the period of 3 years only and not for infinite period.

4. In this connection, I am to add that based on the direction of the Supreme Court regarding indigent circumstances of the family and the decision taken by the Cabinet accepting the recommendations of the Staff Committee, the Government direct that the compassionate ground appointment have to be made as per the detailed guidelines issued in the Government order fifth cited wherein it has been clearly mentioned that the existing time limit of 3 years for filing applications from the date of death of Government Servant shall be continued.

5. I am, therefore, to request you to follow the above guidelines issued in the Government order fifth cited for all present, past and future cases and the instructions issued in Government letter second cited cannot be taken into account. The crux of matter is that the time limit shall be 3 years for filing of application from the date of the death of Government Servant and is applicable to all cases, including where the Government Servant has died in service even prior to 26.6.1995 also.'

7. Perusal of the records shows that the petitioner's father died in harness on 15.10.1994, while he was in service, leaving behind the petitioner's mother, the petitioner's elder sister and the petitioner, as his legal heirs and at the time his death, they were aged about 39 years, 12 years and five months respectively. Admittedly, neither the petitioner's mother nor the petitioner's sister made an application to the authority concerned seeking appointment under compassionate ground. After completing Diploma in Elementary Education in June 2014 and also after attaining majority, the petitioner made an application to the respondents on 09.06.2015, seeking employment assistance under compassionate ground. As per Government Order in G.O.(Ms)No.120, Labour and Employment Department, dated 26.06.1995, the petitioner is not entitled to get appointment under compassionate ground.



8. The learned Additional Advocate General appearing for the respondents drew the attention of this Court to the following judgments:-

(i) **State of Himachal Pradesh and another Vs. Shashi Kumar** reported in **2019 (3) SCC 653**, wherein at Paragraph Nos.35 to 37, the Hon'ble Apex Court has held as follows:-

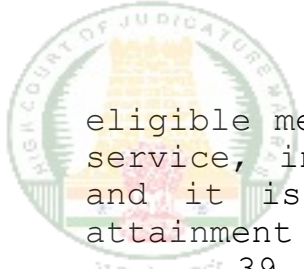
''35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11-5-2015. The application for compassionate appointment was submitted on 8-5-2007. On 15-1-2008 the Additional Secretary had 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 vs. State of Haryana [1994 (4) SCC 138]**, 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 Para (8) of the policy/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 [2006 (5) SCC 766, para 11]** and **Local Administration Department Vs. M. Selvanayagam [2011 (13) SCC 42, paras 11 to 13]**.

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.''

(ii) **The Inspector General of Prisons, Tiruchirappalli District, Tiruchirappalli and another Vs. P. Marimuthu** [W.A. (MD) No. 329 of 2015, decided on 22.04.2016], wherein at Paragraph Nos. 38 and 39, a Division Bench of this Court has held as follows:-

''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.''

9. It is well settled in a catena of decisions that the scheme of compassionate appointment is to tide over the financial constraints of the family due to the sudden demise of the death of the breadwinner and that the person seeking employment assistance should make an application to the competent authorities within three years from the date of death of the employee, subject to satisfying the eligibility criteria, for the post to which he/she seeks for. Insofar as the present case is concerned, the petitioner, who has attained majority on 13.05.2012, has made an application only on 09.06.2015, i.e., after a lapse of nearly 21 years from the date of death of her father viz., 15.10.1994 and the said application is beyond three years as per the Government Order. Hence, the impugned order of the first respondent dated 14.08.2015, rejecting the request of the petitioner, is perfectly valid and there is no reason warranting interference by this Court.

10. In the light of the facts and circumstances of the case and the decision of the Hon'ble Apex Court as well as this Court, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.



2.The Assistant Elementary Educational Officer,
Manoor,
Tirunelveli District.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-75919[F] dated 18/07/2019)

+1 CC to M/s.SPL GP (SR-76031[F] dated 18/07/2019)

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17.07.2019

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JM/06.08.2019/6P-5C