



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.2618 of 2017

and

W.M.P.(MD) Nos.2172 and 2173 of 2017

P.Manikandan

... Petitioner

-Vs-

1.The Secretary and General Manager,
Tamil Nadu Water Supply & Drainage (TWAD) Board,
No.31, Kamaraj Salai, Chepauk, Chennai-600 005.

2.The Administrative Engineer,
Maintenance Division,
Tamil Nadu Water Supply & Drainage (TWAD) Board,
Pudukottai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent herein relating to the proceedings bearing M.No.980/NV2/KO.Oyivu/2016, dated 18.08.2016 signed on 22.08.2016 and quash the same and consequently, direct the respondents herein to appoint the petitioner herein in any suitable vacancy in the office of the second respondent herein.

For Petitioner : Mr.B.Saravanan

For Respondents : Ms.Porkodi Karnan

ORDER

The order of second respondent dated 18.08.2016, is sought to be quashed in the present Writ Petition and further direction is sought for to direct the respondents to appoint the petitioner in any suitable vacancy in the office of the second respondent.



2. According to the petitioner, his father, namely, M.Palanivelu died on 29.03.2002, while working as Driver in the second respondent Board, leaving behind the petitioner, his mother, sisters and brother. His mother gave a representation dated 16.07.2003 to the respondents for appointment on compassionate ground. The petitioner, on attaining the age of majority, gave an application dated 06.02.2008 to the second respondent for appointment on compassionate ground. The second respondent, by the proceedings dated 11.06.2008, has forwarded the said application of the petitioner to the first respondent with his recommendations on 04.06.2008. The first respondent has sent communication, dated 09.01.2009 to the second respondent, raising a query as to how the second respondent has recommended the case of the petitioner, when the application was made after three years of death of the petitioner's father. Subsequently, no order was passed either by the first respondent or by the second respondent. The petitioner gave a representation to the Chief Minister's Cell and to the respondents. The first respondent has sent a communication dated 15.04.2016 to the petitioner, stating that orders will be passed on his application, after receiving reply from the second respondent and marked a copy to the second respondent. The petitioner has sent reminders to the respondents. When the matter is pending with the first respondent, the second respondent, by the impugned order dated 18.08.2016, has rejected the request of the petitioner for compassionate appointment on the ground that the said claim was not made by the petitioner, within three years from the date of the death of his father. Challenging the said order, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the petitioner contended that the representation given by the mother of the petitioner dated 16.07.2003, was not considered by the respondents and no order was passed therein. When the petitioner attained majority, he has sought for appointment on compassionate ground by his representation dated 06.02.2008 and the same was forwarded by the second respondent to the first respondent. Subsequently, the second respondent, by the impugned order dated 18.08.2016, has erroneously rejected the application of the petitioner on the ground that the claim of the petitioner is time barred. The learned counsel appearing for the petitioner further contended that when the legal heirs, who were minor at the time of death of the employee, make an application, the same has to be considered on merits and relied on the order dated 17.06.2010, made in W.P.No.3078 of 2006.

4. The respondents have filed counter affidavit. The learned counsel appearing for the respondents contended that there is no record in the file to show that the petitioner's mother sought for compassionate appointment on 16.07.2003. The petitioner's mother has not possessed requisite educational qualifications. The petitioner



made, the same cannot be transferred to other legal heirs. The application of the petitioner dated 06.02.2008 was filed after three years from the death of the petitioner's father and the same is rightly rejected by the second respondent as per G.O.Ms.No.120, dated 26.06.1995 and prayed for dismissal of the Writ Petition.

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5. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents and perused the materials available on record carefully.

6. From the materials on record, it is seen that the contention of the learned counsel appearing for the petitioner is that the petitioner's mother made an application for appointment on compassionate ground on 16.07.2003, which is within one year of the death of her husband. On the other hand, the respondents have filed counter affidavit, denying having received any such application. At the same time, the respondents have stated in the counter affidavit that the petitioner's mother has not possessed educational qualifications to be appointed and that the petitioner was minor, and that nomination once made cannot be transferred to any legal heir. The respondents have taken contradictory stand. If the petitioner's mother was not possessing educational qualifications, the respondents ought to have rejected the application at the time itself. The first respondent, by communication dated 09.01.2009, has informed the petitioner that the first respondent would pass orders after receiving explanation from the second respondent. The second respondent has not sent any explanation to the first respondent and the first respondent has not passed any order. Instead, the second respondent himself has rejected the request of the petitioner without reference to the recommendations made to the first respondent.

7. In the order dated 17.06.2010 made in W.P.No.3078 of 2006, relied by the learned counsel appearing for the petitioner, this Court, considering various judgments of the Division Bench of this Court and the Hon'ble Apex Court in the case of minor making application and also in the case of the legal heirs of the deceased making an application, after attaining the majority, held that when application is made by a legal heir, after attaining the age of majority, the same has to be considered, on merits and orders to be passed. The judgments of the Hon'ble Apex Court as well as the Division Bench of this Court referred to in the said order as well as the order dated 17.06.2010 made in W.P.No.3078 of 2006 are squarely applicable to the facts of the present case.

8. In the result, this Writ Petition is allowed and the impugned order of the second respondent dated 18.08.2016 is quashed. The respondents are directed to consider the application of the petitioner, dated 06.02.2008 and pass revised orders, on merits without any reference to the three years period, within a period of



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costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

Myr

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-100968[F] dated 25/11/2019)

+2 CC to M/s.B. SARAIVANAN, Advocate (SR-100860[F] dated 25/11/2019)

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JMN(24.01.2020) 4P : 4C