

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.11578 of 2011
and
M.P.No.1 of 2011

B.Gunasekaran

...Petitioner

.vs.

1. The Principal Chief Forest Officer,
Panagal Maligai, Saidapet,
Chennai - 600 015.
2. The Forest Officer,
Madurai Division,
Madurai.
3. The District Forest Officer,
Theni Division,
Theni District - 625 531.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records in Na.Ka.No.S2/62198/08 dated 01.04.2010 on the file of the first Respondent and quash the same and issue consequential direction directing the Respondent to appoint the Petitioner in any post in Forest Department.

For Petitioner : Mr.V.Chandrakanthan

For Respondents: Mr.S.Prabhu,
Addl. Government Pleader

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O R D E R

Petitioner has come up with the present Writ Petition seeking to quash the order dated 01.04.2010 passed by the 1st Respondent vide Na.Ka.No.S2/62198/08 and for a consequential direction to the Respondents to appoint him in any post in Forest Department.

2. The case of the Petitioner is that, his father viz. Balakrishnan, who was working as Forest Officer, died on 01.07.1992, while in service and that, he was six years old at that point of time. The Petitioner's mother viz. P.Mageswari had initially made an Application to the 1st Respondent seeking appointment on compassionate grounds. The 1st Respondent, by letter dated 24.02.2005, rejected her request stating that, there is a ban with regard to recruitment by the Government. After lifting of the ban, the 3rd Respondent by letter dated 04.08.2006, directed the Petitioner to furnish documents within 15 days.

3. It is further stated by the Petitioner that, he furnished all the documents and appeared before the 3rd Respondent on 16.02.2007. After enquiry, the 3rd Respondent, by letter dated 04.12.2007, recommended the Petitioner's name to the 2nd Respondent to appoint him either as Watchman or Night-Watchman. The 2nd Respondent, by letter dated 10.01.2008, recommended the Petitioner's name for appointment. However, by letter dated 05.04.2008, the 2nd Respondent informed the Petitioner that, he is not entitled for the post of Forest Officer, as he studied only upto IX Standard, and that, he will be appointed in a post depending upon his qualification. The Petitioner produced his Driving Licence and other documents to the District Forest Officer, Theni for appointment as Driver. The grievance of the Petitioner is that, in spite of the promise made by the Respondents, by an order dated 01.04.2010, the 1st Respondent rejected his request for appointment on compassionate grounds, stating that, there is delay in his request.

4. Learned Additional Government Pleader appearing for the Respondents pointed out that, there was delay on the part of the Petitioner's mother with regard to sending the Application seeking appointment on compassionate grounds, and as such, it was not made within a period of three years from the date of death of her husband.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. Respondents would have had a good case, if they had rejected the Petitioner's Application on the ground that, it was not made within three years. It has to be noted that, three years' delay period already expired before the ban was imposed. Instead, Respondents herein have sent a communication to the Petitioner that, his case would be considered for compassionate appointment and sought for particulars from him. Pursuant thereto, the Petitioner had also furnished all necessary

documents to the Respondents and has also attached a copy of his Driving License. It is only thereafter that, the Respondents herein rejected the Petitioner's request for compassionate appointment on the ground that, the Petitioner studied only upto 9th Standard and that his name cannot be considered for the post of 'Forest Officer' and that, he can be considered only for the post of Watchman/Night Watchman.

7. Having rejected the Petitioner's request for compassionate appointment on the ground that the Application has been made belatedly, which has subsequently been condoned, Respondents cannot, by means of a counter, now contend that, the Petitioner did not possess the requisite qualification. He may not be eligible to be appointed to the post of 'Forest Officer', but, as admitted by the Respondents, he can be considered for appointment to the post of 'Watchman/Night Watchman' or any other suitable post.

8. The Apex Court in the decision rendered in Bhawani Prasad Sonkar vs. Union of India, reported in (2011) 4 SCC 209, has clearly held that, an application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time. In the case on hand, having condoned the delay, called for particulars from the Petitioner and thereafter rejecting his Application on the ground that, the Application seeking compassionate appointment has not been made within three years, may not be correct. Further, in paragraph 20(iv) of the said decision, the Apex Court has clearly held that, compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

9. Further, in a similar circumstance, in W.P.(MD) Nos.4129, 7045, 16624 and 20786 of 2014 and W.P.(MD) Nos.19455 and 19530 of 2018 [S.Gowtham Balu vs. The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai] decided on 24.09.2018, this Court has considered all the aspects pertaining to Compassionate Appointment and passed a detailed order by extending few suggestions to the Government. Relevant portion of the said decision is extracted hereunder:

"6. The Government may think of issuing a fresh Government Order, if they want to stick on compassionate appointment scheme and one such condition is that compassionate appointment would be

considered only for Class-IV employment and that age can be relaxed and the qualifications can be entirely relaxed, as there is no need for any qualification for the purpose of appointing the persons as sweeper, gardener and the like. In the event the spouse refusing to accept the Class-IV employment, the same can be rejected and the children, after becoming major, cannot seek for compassionate appointment. There should be a prescribed procedures so that the application can be routed through Email and the said application will have to be considered and orders to be passed within the stipulated time. For making an application a time limit can be fixed as one year instead of three years. The appointment through compassionate appointment is a substantial litigation in this Court and the Government should ensure that they take an unbiased decision within a maximum period of six months so that the applicant will know where they stand. As a matter of right, the applicant cannot demand that based on the higher qualification they shall be appointed in Class-III posts, as the Class-III posts is meant either for promotion or for direct recruitment and shall not be taken for compassionate appointment. In addition to the above, this Court expects the Government to take into account the following suggestions and issue a Government Order immediately so that it can be given effect to from 1st January, 2019:

(i) the compassionate shall be made within a period of one year from the date of death of the deceased Government employee;

(ii) the qualification for Class-IV employees can be completely exempted for the purpose of giving compassionate appointment and though Basic Rules provide for certain category of posts falling under compassionate appointment, the same is only illustrative in nature. For example, for appointment to the post of Sweeper, there is no need to prescribe any qualification and what is required is, it must be ensured as to whether

persons to be appointed to the post of Sweeper on compassionate ground know to read and write and ride bicycle / two wheeler and other basic household / office works;

(iii) as held by the Hon'ble Supreme Court in the case reported in [(2011) 4 SCC 209], the purpose of compassionate appointment is to meet the sudden crisis and there is no need to keep a post to claim after 18 years. Therefore, it is clear that the request for appointment on compassionate ground for the child in the womb, by seeking reservation of one post till the child's majority cannot be entertained;

(iv) whenever an application for compassionate appointment is made, it should be decided within a period of three months from the date of receipt of the said application and the person making such application for compassionate appointment should despatch the same either by speed post or by registered post. Once an application is received, it is open to the concerned authorities to call for the documents from the deponents / legal heirs so that her case can be considered and decision should be taken within a period of two months thereafter. Once a request is made calling for documents, the concerned person will have to submit the required documents within 15 days. If the application for compassionate appointment is not decided within three months from the date of receipt of such application, then the concerned Officer, who is responsible to take a decision thereon, should be removed from the post and posted in a non-sensitive post. This will avoid further litigation, as the persons applying for compassionate appointment have been approaching this Court for disposal of the representation after lapse of decades and getting an order so as to litigate unnecessarily and the order of disposal of representation is not a conclusive one for litigants, but a starting point of litigation;

(v) the documents sought by the

concerned authorities should be uploaded by the application so that there would be no quarrel with regard to non-consideration of vital documents by the authorities, while scrutinizing the application for compassionate appointment. The applicant shall also furnish his/her Cell Number, Email Address, etc., to enable the authorities to communicate the order to be passed in his/her application.

(vi) for the sake of brevity, it is reiterated that the compassionate appointment should be restricted only to Class-IV employment instead of Class-III & IV so that the claim for compassionate appointment would be reduced;

(vii) in case compassionate appointment is considered other than the spouse, then 25% of the gross monthly income shall be directly paid to the spouse by way of NEFT or RTGS and the said gross income is subject to income tax deductions. The reason for not granting 25% of the amount from the Nett salary is that the employee may take loans and ensure that the take-home salary is very less and the 25% of the amount payable on the Nett after loan deduction would be very meagre and will not be sufficient to have a square meal for the day for the spouse at the old age. Many of the children, after getting employment, are driving the parents to old age home and in order to ensure that the spouses are protected and taken care of, 25% of the amount has got to be given to them. As per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, it is the bounden duty of children to take care of them and their children should not be allowed to leave their parents in lurch, thereby letting them scot-free and the old aged people at the fag end of their life are rushing to Courts to get money from their children. In order to avoid such a haphazard situation, this Court wants to ensure that 25% of the gross shall be paid to the spouses, which would be subjected to income tax payable by the employee.

(viii) the spouse, who is getting 25% of the amount as mentioned supra shall produce the life certificate once in a year preferably on the 1st March of every year;

(ix) we suggest that the Government issues a Government Order to that effect, as the Court is burdened with not less than 5% of the service matters, seeking employment on compassionate ground from various departments, such as Electricity Board, etc and since there is no uniform guidelines for all the Government departments, there is always a confusion and chaos, thereby creating unnecessary litigations;

(x) the compassionate appointment shall not be considered as a back door entry and it is based on rules, regulations, guidelines and Government Orders. However, it should be remembered that compassionate appointment is not an usual recruitment process and the candidates seeking such appointment will have to satisfy all the requirements contemplated under the Rules with regard to the age, qualification, etc, but however, it is subject to relaxation depending upon the circumstances of each case."

10. In view of the above, the Petitioner may not be eligible to any post except Class IV employment. As the Respondents have clearly stated in the Counter Affidavit that, the case of the Petitioner will be recommended for the post of 'Watchman/Night Watchman', this Court directs the Respondents herein to provide appointment to the Petitioner on compassionate grounds in any Class IV vacancy, if he fulfills other requisite conditions and relax his age, as the present Writ Petition is pending for a decade. Such appointment shall be made within a period of three months from the date of receipt of a copy of this order.

11. It is reiterated that, any decision taken by the Respondents shall be communicated to the Petitioner within a period of three months, failing which, it would amount to disobedience of the order of this Court. This specific direction is issued with a view that, no orders for considering the case suitably can be kept in a cold storage without any decision.

In fine, this Writ Petition is allowed in part, with the above direction and observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To:

1. The Principal Chief Forest Officer,
Panagal Maligai, Saidapet,
Chennai - 600 015.
2. The Forest Officer,
Madurai Division,
Madurai.
3. The District Forest Officer,
Theni Division,
Theni District - 625 531.

+1cc to Mr.V.Chandrakanthan, Advocate, S.R.No.32098

W.P.No.11578 of 2011
and M.P.No.1 of 2011

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