

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.09.2020
CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26613 of 2011

K.Ravi

... Petitioner

-vs-

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Labour and Employment,
Secretariat, Fort St.George,
Chennai-600 009.

2.The District Collector,
Cuddalore District,
Cuddalore.

3.The Revenue Divisional Officer,
Virudachalam Division,
Cuddalore District.

4.The Tahsildar,
Thittakudi Taluk,
Cuddalore District.

.... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order made in Na.Ka.A1/21149/2007 dated 29.09.2011 by the 2nd respondent and the subsequent order made in Na.Ka.A1/21149/2007 dated 12.10.2011 by the 2nd respondent, quash the same and further direct the 2nd respondent to provide appointment on compassionate ground to the petitioner in the 4th respondent Office.

For Petitioner : Mr.P.Nagaraju

For Respondents: Mr.K.Magesh
Spl. Govt. Pleader

O R D E R

The Writ Petition has been filed, challenging the order of the 2nd respondent made in Na.Ka.A1/21149/2007 dated 29.09.2011 and also the subsequent order made in Na.Ka.A1/21149/2007 dated 12.10.2011 by the 2nd respondent, by which the petitioner's request for compassionate appointment was rejected on the ground that the application was submitted belatedly after expiry of three years and it was also not submitted within the extended

period of three months. The petitioner also sought a direction to the 2nd respondent to give employment to him on compassionate ground.

2. It is the case of the petitioner that his father, who had been working as a Village Assistant under the 4th respondent, died in harness on 05.05.2003, leaving behind the petitioner and also the mother, elder brother, elder sister and three younger brothers of the petitioner. The mother of the petitioner and his siblings gave consent to him for getting appointment on compassionate ground and at the time of his father's death, the petitioner was 29 years old. When he had approached the 4th respondent for compassionate appointment on account of his father's death while in service, he was informed that pursuant to the ban for new recruitment by the Government, he cannot be appointed and his application would be considered on seniority basis. It is the further case of the petitioner that subsequent to the lifting of ban, he was asked to submit a fresh representation with the request for providing Government employment on compassionate ground and the Government also extended three months' period on 12.03.2007 for receipt of such application on account of the ban. According to the petitioner, the said extension is not applicable to him, as his mother had made an application within the stipulated time. It is also the case of the petitioner that when he approached the 2nd respondent to know about the fate of his application, he received a letter dated 15.04.2009 from the 2nd respondent, with a direction to participate in the personal enquiry, in response to which, the petitioner submitted all the required certificates for consideration. Despite production of all documents, there was no response from the 2nd respondents and thereafter, his mother send a representation dated 01.10.2009 to the Chief Minister's Cell and to the 2nd respondent, pursuant to which, the impugned orders came to be passed, rejecting the request of the petitioner. Aggrieved by the same, the petitioner is before this Court.

3. The 4th respondent filed a counter affidavit as early as in October, 2012, wherein it was stated that after the death of the father of the petitioner, the petitioner submitted his representation on 14.02.2007 before lifting of the ban order by the Government and the application said to be forwarded by the mother of the petitioner within three years was not received by any of the respondents. It was further stated that though a grace time of three months was given by the Government for submission of applications for compassionate appointment, the said extension of time was not utilized by the petitioner. The averment made by the petitioner that a personal enquiry was conducted on 15.04.2009 is baseless, as no such enquiry / interview was conducted by the Office of the respondents. Hence, it was finally stated that since the petitioner failed to submit his representation in time, his request was declined vide impugned orders, which do not warrant any interference by this Court.

4. Learned counsel for the petitioner submitted that there was a ban for new recruitment from 2001 to 2006, consequent to which, the petitioner was not able to forward any application for compassionate appointment. However, the mother of the petitioner sent an application in this regard within three years and though the petitioner attended the personal enquiry on the instruction of the 2nd respondent and produced all requisite documents, there was no positive response. Learned counsel for the petitioner further submitted that the extension of three months' time is not applicable to the case of the petitioner, as he had submitted the application even prior to that and therefore, the rejection on account of delay and laches has no legs to stand.

5. Per contra, learned counsel for the respondents contended that the request of the petitioner was rejected strictly in accordance with the Rules and Government Order and since there was a ban on recruitment, the application submitted during that period cannot be accounted for. Thereafter, the Government itself, by its order dated 12.03.2007 in G.O.Ms.No.42 Labour and Employment had provided an opportunity to submit applications for compassionate appointment to persons like that of the petitioner, which was not duly utilized by the petitioner. Hence, the impugned orders passed in consonance with the order and Rules, need not be set aside and the request of the petitioner cannot be considered at this distant point of time.

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

7. A perusal of the case reveals that the father of the petitioner died on 05.05.2003 and thereafter, mother of the petitioner made an application for compassionate appointment to the petitioner on 19.04.2005. The Tahsildar / 4th respondent herein, apart from furnishing the details, such as family members of the deceased, indigenous circumstances of the family, had also recommended the case of the petitioner for compassionate appointment. However, by the impugned orders dated 29.09.2011 and 12.10.2011, the request of the petitioner was rejected on the ground that the petitioner had not sent the application within three months in terms of Government Order dated 12.03.2007. Of course, it is true that there was a ban for recruitment from 2001 to 2005 and the same was lifted on 21.02.2006 and subsequent thereto, another Government Order dated 12.03.2007 was issued, extending the period of three months for submission of application for compassionate appointment. When the application was made by the petitioner prior to the issuance of Government Order dated 12.03.2007, the contention of the learned Special Government Pleader that only those persons, who had made applications within the extended period of three months alone were considered for compassionate appointment, cannot be accepted and is liable to be summarily rejected. The said Government Order stipulates that those, who have not applied during ban period, were given time of three

months to make applications. Admittedly, in this case, the petitioner had made an application prior to the issuance of Government Order and therefore, the rejection on the particular ground cannot be accepted and is illogical.

8. It is no doubt true that the compassionate appointment cannot be demanded as a matter of right and only to safeguard the family, which is in distress on account of demise of the employee / earning member of the family and to come out from the indigenous circumstances, such appointments are widely made, though it is construed to be a back door entry. I have also considered various judgments of the Apex Court and rendered a finding with regard to compassionate appointment in the case of S.Gowtham Balu The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai - 600 002 and another [W.P.(MD)Nos.4129, 7045, 16624 and 20786 of 2014] decided on 24.09.2018. A harmonious reading of the averments made in the affidavit as well as in the counter affidavit projects that this case stands on a different footing.

9. Though the argument put forth by the learned Special Government Pleader appearing for the respondents that there was a ban for recruitment and the application submitted for appointment on compassionate ground during that period cannot be entertained by the respondents, looks sound at the first instance, it is pertinent to mention here that there was a ban only for new recruitment and there was no ban for receipt of applications for consideration of compassionate appointment futuristically. Therefore, this Court is of the view that there is substance and merits in the contention of the petitioner and the Writ Petition will have to succeed.

10. In the result, this Writ Petition is allowed and the impugned orders dated 29.09.2011 and 12.10.2011 passed by the 2nd respondent are hereby set aside. The 2nd respondent is directed to provide employment to the petitioner on compassionate ground on or before the end of December, 2020 and in case the petitioner is not provided employment on or before the expiry date, he is deemed to have entered service from 01.01.2021 and he is entitled to the salary of last grade employee till he is actually placed in service and the said amount could be recovered from the Officer responsible to comply with the order. Since the request of the petitioner was rejected on 12.10.2011 for the second time by the 2nd respondent and on account of setting aside of the said order now, the petitioner is deemed to have entered into service from 12.10.2011. However, he is not entitled to any service benefits, seniority, wages and the like and the interregnum period will be taken into account only for the purpose of terminal benefits like pension, gratuity, etc., as if he joined the service on the said date and for that purpose alone, he should be treated to be in continuous

service. It is made clear that in this order, this Court does not direct the 2nd respondent to consider the appointment of the petitioner on compassionate ground as being done in the usual course, but specifically directs the 2nd respondent to provide employment to the petitioner on compassionate ground on or before the end of December, 2020 so as to avoid one more round of litigation. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary,
Government of Tamil Nadu,
Department of Labour and Employment,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The District Collector,
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- 3.The Revenue Divisional Officer,
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Cuddalore District.
- 4.The Tahsildar,
Thittakudi Taluk,
Cuddalore District.

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A.SK(11/09/2020)

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