

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22963 of 2013

And

M.P.No.1 of 2013

V.Moorthy

... Petitioner

Vs.

1.The Inspector General of Registration,
Santhome,
Chennai 600 028.

2.The District Collector,
Villupuram District,
Villupuram.

3.The District Registrar,
Tindivanam Registration,
Tindivanam.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of 3rd respondent in Na.Ka.No.974/A1/2012 dated 19.03.2012 and the subsequent proceedings in Na.Ka.No.387/A1/2013 dated 07.02.2013 and quash the same and consequently direct the respondents to appoint the petitioner to the post of Junior Assistant/ Office Assistant in the department of Registration, Villupuram District on compassionate grounds within a stipulated time.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents: Mr.T.M.Pappiah for R1 and R3
Special Government Pleader
Mr.S.Thangavel for R2
Special Government Pleader

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O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records relating to the proceedings of third respondent in Na.Ka.No.974/A1/2012 dated 19.03.2012 and the subsequent proceedings in Na.Ka.No.387/A1/2013 dated 07.02.2013 and to quash the same and to consequently direct the respondents to appoint the petitioner to the post of Junior Assistant/ Office Assistant in the Department of Registration, Villupuram District on compassionate grounds within a stipulated time.

2.The case of the petitioner is that the petitioner's father was employed as Office Assistant in the Office of Sub Registrar, Ginjee, Tindivanam Registration District and he died on 15.06.1990 while he was in service. The petitioner was studying II standard when his father died and hence after completion of School education, he made representation to the respondents seeking appointment on compassionate grounds, however, the petitioner's claim was rejected on the ground that as per G.O.Ms.No.120, dated 28.06.1995, application for appointment on compassionate grounds should be made within a period of three years from the date of death of the Government servant. Aggrieved by the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner's father died on 15.06.1990 while he was in service. The petitioner was studying II standard when his father died and hence after completion of School education and after attaining the age of majority, the petitioner made representation to the respondents seeking appointment on compassionate grounds, however, the petitioner's claim was rejected. He would further submit that the respondents ought to have considered the indigenous circumstances of the petitioner, however, without considering the issue on merits, the third respondent simply rejected the petitioner's claim on the ground of period of limitation, which is un-sustainable.

4.The learned Special Government Pleaders would submit that the issue involved in this case is no more res integra and would further submit that in the decision of the Division Bench of the Madurai Bench of this Court reported in 2016 (5) CTC 125 (The Inspector General of Prisons Vs. P.Marimuthu), it has been clearly held that the representation made beyond the period of limitation cannot be considered. Further, the purpose of giving appointment on compassionate grounds is to provide immediate financial assistance to the family of a Government servant who dies in harness, when there is no other earning member in the

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family.

5. Heard the arguments advanced on either side and perused the materials available on record.

6. It is useful to extract hereunder the relevant portion of the decision of the Division Bench of the Madurai Bench of this Court reported in 2016 (5) CTC 125 (The Inspector General of Prisons Vs. P. Marimuthu):

"32. It is well settled, in a catena of decisions extracted supra, that the scheme of compassionate appointment is to tide over the financial constraint of the family and that the person seeking for 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 seeks for. Reference can also be made to the decision in Steel Authority of India Limited v. Madhusudan Das, 2009-2-L.W. 233; (2008) 15 SCC 560, wherein, the Hon'ble Supreme Court has clarified the law relating to compassionate appointments and held that it is only a concession and not a right:

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. (See SBI v. Anju Jain, (2008) 8 SCC

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475 para 33.)”

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.

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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."

7. Admittedly, the petitioner's father died on 15.06.1990 while he was in service. The petitioner was studying II standard when his father died and hence after completion of School education, he made representation to the respondents seeking appointment on compassionate grounds, however, the petitioner's claim was rejected on the ground that as per G.O.Ms.No.120, dated 28.06.1995, application for appointment on compassionate grounds should be made within a period of three years from the date of death of the Government servant. Hence, in view of the decision cited supra and in view of the settled legal position, this Court is not inclined to grant the relief sought for in this writ petition.

8. The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
Santhome,
Chennai 600 028.

2. The District Collector,
Villupuram District,
Villupuram.

3. The District Registrar,
Tindivanam Registration,
Tindivanam.

+1cc to the Government Pleader SR.34753, 34784

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CB(03/12/2020)

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