

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.08.2020
CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P.No.3820 of 2011

K.Padmanabhan

... Petitioner

-vs-

1.The Assistant Commissioner / Zonal Officer,
Zone-V, Corporation of Chennai,
No.183, E.V.R.Periyar Salai,
Kilpauk, Chennai-600 010.

2.The Commissioner,
Corporation of Chennai,
Chennai-600 003.

... 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 from the 1st respondent pertaining to the proceedings in No.M.A.5.Na.Ka.No.A4/8265/10 dated 01.12.2010 and quash the same and consequently order the respondent to give employment to the petitioner on compassionate grounds.

For Petitioners : Mr.T.S.N.Prabhakaran

For Respondents : Mr.R.Gopinath

O R D E R

The Writ Petition has been filed, challenging the order of the 1st respondent passed in No.M.A.5.Na.Ka.No.A4/8265/10 dated 01.12.2010, 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. The petitioner also sought a direction to the respondent to give employment to him on compassionate grounds.

2. It is the case of the petitioner that his mother, who had been working as a Sweeper in Division No.77, Area 15, Zone V, had died in harness on 27.08.2002 and at that time, the petitioner was 24 years old. When he had approached the respondent for compassionate appointment on account of his mother's death while in service, he was informed that pursuant to the ban for new recruitment by the Government, he cannot be appointed. It is the further case of the petitioner that

subsequent to the lifting of ban, he sent several petitions with the request for providing Government employment on compassionate grounds, in response to which, the 1st respondent, by his letter dated 16.12.2008, asked the petitioner to produce required documents for consideration. Despite production of all documents, there was no response from the respondents and finally, the impugned order came to be passed, rejecting the request of the petitioner, against which, the petitioner is before this Court.

3. The 2nd respondent filed a counter affidavit dated 10.10.2018, wherein it was stated that after the death of the father of the petitioner, his mother was given employment and after her demise on 27.08.2002, the petitioner submitted his representation on 19.09.2008, 08.11.2008 and 10.11.2008 respectively, which were not within three years from the date of death of his mother as per G.O.Letter No.42119/Ma.Na.3/07-2 dated 11.04.2008. It was further stated that the Assistant Executive Engineer, Unit-15 addressed a letter dated 16.12.2008 to the Tahsildar, Mylapore - Triplicane Taluk for production of details with regard to the petitioner's property and family, which has not been received either from the Tahsildar or from the petitioner. Hence, it was finally stated that since the petitioner failed to submit his representation in time and also to produce the certificate sought for by the respondents, his request was declined vide impugned order, which does 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 and it was the 1st respondent, who demanded a number of documents for considering the request of the petitioner. Learned counsel for the petitioner further submitted that it was incorrect to state that the certificate from Tahsildar was not received, as the Special Legal Heirship Certificate required by the respondents was forwarded by the Tahsildar directly to the Assistant Executive Engineer, Unit-15, Zone-5 as early as on 09.07.2010 and therefore, the rejection for want of required certificate 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 even assuming for the sake of argument that there was a ban on recruitment, nothing prevented the petitioner to have forwarded the application within three years. Hence, the impugned order passed in consonance with the order 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. 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.

8. However, a reading of the averments made in the affidavit as well as in the counter affidavit projects that this case stands on a different footing. The petitioner was 32 years of age at the time of filing the Writ Petition and the plea taken by the respondents that he is 42 years now and his request cannot be considered at this distant point of time cannot be accepted, as he cannot alone be blamed for the pendency of the matter for such long years. Admittedly, the petitioner lost his father, when he was young and his mother was given compassionate appointment and after her death, he made an application in the year 2008.

9. Though the argument put forth by the learned counsel for the respondents that there was a ban only for recruitment and the petitioner should have sent the application at least within three years of her demise, sounds good, it is not known as to why the 1st respondent sent a communication to the petitioner in the year 2008 for production of various documents, apart from directly addressing a letter to the Tahsildar on 30.01.2009 to verify and report as to whether the petitioner's family was really in indigenous circumstances. In response to the said letter, the Tahsildar also sent a communication dated 09.07.2009 along with a certificate to the Corporation, explaining the indigenous circumstances. Therefore, the rejection mainly on the ground of non production of the certificate as could be seen from Paragraph Nos.5 & 6 of the counter affidavit, cannot stand in the eye of law. For better appreciation, Paragraph Nos.5 & 6 of the counter are extracted below:

"5. I submit that the Assistant Executive Engineer, Unit-15 has addressed a letter, dated 16.12.2008 to the Tahsildar, Mylapore - Triplicane Taluk requesting them to furnish the certificate about the property and family details etc. of the petitioner. Even still the relevant certificate has not yet been received by the respondent from the above Tahsildar or from the petitioner. The petitioner fail to submit his representation in time as per the rules of the compassionate grounds appointment norms. Hence, the petitioner's representation cannot be considered.

6. I submit that the representation of the petitioner has been rejected due to belated submission after lapse period of three years from the date of his Mother's death, as per the Government Letter No.42119/Ma.Na.3/07/2, Municipal Administration and Water Supply Department, dated 11.04.2008."

10. In the typeset of papers, the petitioner has annexed the certificate forwarded by the Tahsildar directly to the Assistant Executive Engineer, Unit-15 and having duly received the same by the Corporation, the contra statement made by the 2nd respondent in the counter affidavit is highly deprecated. M/s.R.Lalitha, I.A.S., who was the then Commissioner i/c made such an incorrect statement in the counter affidavit. Of course, though the counter affidavit would have been drafted by her Subordinate with the assistance of the counsel for the Corporation, being an I.A.S. Officer, it is her bounden duty to ascertain the entire facts before ascribing her signature. Therefore, this Court is of the view that for no fault of the petitioner, he cannot be made to languish for more than a decade and he is entitled to be appointed on compassionate ground.

11. In the result, this Writ Petition is allowed and the impugned order dated 01.12.2010 passed by the 1st respondent is hereby set aside. The respondent Corporation is directed to provide employment to the petitioner on compassionate ground on or before the end of November, 2020 and in case the petitioner is not provided employment on or before the expiry date, he is deemed to have entered in service from 01.09.2020 and he is entitled to the salary of last grade employee, which could be recovered from the Officer responsible to comply with the order.

12. Since the Corporation has not come with clean hands, pendency of the case does not come in the way of the petitioner for counting the past period. As per the counter affidavit, the

petitioner made three applications in the year 2008, out of which, the last one was dated 19.09.2008 and therefore, he is deemed to have entered into service from 19.09.2008. However, he is not entitled to any service benefits, seniority, wages and the like and the period will be taken into account only for the purpose of gratuity and pensionary benefits, as if he joined the service and for that purpose alone, he should be treated to be in continuous service.

13. It is made clear that in this order, this Court does not direct the respondents to consider the appointment of the petitioner on compassionate ground as being done in the normal case, but specifically directs the respondents to provide employment to the petitioner on compassionate ground on or before the end of November, 2020. Though it is a fit case to impose costs of not less than Rs.10,000/- on the then Commissioner i/c., namely, M/s.R.Lalitha, I.A.S., this Court refrains itself from doing so, instead it is directed that she shall be posted only in non-sensitive post.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

- 1.The Assistant Commissioner / Zonal Officer,
Zone-V, Corporation of Chennai,
No.183, E.V.R.Periyar Salai,
Kilpauk, Chennai-600 010.
- 2.The Commissioner,
Corporation of Chennai,
Chennai-600 003.

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