

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.01.2020
CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.34750 of 2019
and
WMP No.35499 of 2019

R.Indhu

... Petitioner

.Vs.

- 1.The State of Tamilnadu
rep.by its Secretary to Government,
Labour & Employment Department,
Secretariat,
Chennai-9.
 - 2.The Director of Public Health,
and Preventive Medicine,
Chennai 600 006.
 - 3.The Deputy Director of Health Services,
Coimbatore.
- ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned dated 21.05.2019 made in O.Mu.No.41319/Pa.Tho.4/2019/Iru.3 passed by the 2nd respondent, quash the same, and consequently directing the respondents to consider the petitioner's representations dated 10.04.2019, 15.04.2019, 06.05.2019, 26.08.2019 and 05.12.2019 to grant compassionate appointment by substituting her son R.Anish in the place of her name for the death of her husband M.Radhakrishnan in harness on 05.12.2006.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned proceedings of the 2nd respondent dated 21.05.2019, rejecting the request made by the petitioner

to consider for compassionate appointment to the son of the petitioner and for consequential direction to the respondent to grant compassionate appointment to her son.

2.The husband of the petitioner was working as a Mechanic in the office of the 3rd respondent and he died in harness in the year 2006. He left behind the petitioner, one daughter and son. The family was struggling to meet the needs and therefore, the petitioner submitted an application in the year 2007, before the 3rd respondent seeking for compassionate appointment.

3.The Tahsildar, Coimbatore North Taluk has also given an indigent certificate in the year 2007 and that was also submitted to the 3rd respondent. The application ultimately came to be processed by the 2nd respondent only in the year 2019 and the 2nd respondent by proceedings dated 10.04.2019, directed rectification of certain defects in the application that was submitted by the petitioner. It is important to bear in mind that the son of the petitioner was a minor, who was aged about 12 years at the time of the death of his father. In the meantime, he completed B.E. course.

4.The application given by the petitioner was considered only in the year 2019, by that time she was aged about 48 years. The petitioner is also suffering from some ailments. Therefore, she made a representation dated 10.04.2019, to the 2nd respondent to grant the compassionate appointment to her son. This representation was rejected by the 2nd respondent by the impugned proceedings dated 21.05.2019 and the same has been made a subject matter of challenge in the present Writ Petition.

5.The learned counsel for the petitioner submitted that the petitioner had submitted the application within one year from the date of the death of her husband along with the indigent certificate issued by the Tahsildar. The learned counsel further submitted that the application submitted by the petitioner was taken up for consideration after nearly 13 years and in the meantime, the petitioner became old and her physical condition prevented her from taking up any work. Therefore, a representation was made to the 2nd respondent to consider the compassionate appointment for the son of the petitioner, who had completed B.E. course and who will possess the qualification in order to be considered for compassionate appointment. The learned counsel further submitted that the 2nd respondent ought not to have rejected the representation made by the petitioner only on the ground that the rules does not permit consideration for compassionate appointment for more than one legal heir of the deceased employee. The learned

counsel submitted that ultimately only one legal heir in the family is going to be provided with the compassionate appointment and it is not a case where more than one person is claiming for compassionate appointment. Therefore, according to the learned counsel, the reasoning given by the 2nd respondent in rejecting the request made by the petitioner is illegal and requires interference of this Court.

6. Per contra, Mr. P. S. Sivashanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the delay cannot be attributed against the respondents since for sometime there was a ban on recruitment and ultimately the vacancy arose only in the year 2019. Therefore, only at that point of time, the application given by the petitioner could have been considered. The learned counsel submitted that the compassionate appointment will be considered only for the person who has applied for the same and it cannot be substituted with another legal heir and the same is impermissible under the rules. The learned counsel therefore submitted that there is absolutely no ground to interfere with the impugned proceedings of the 2nd respondent and if at all, the petitioner wants to pursue with the application, she can submit all the necessary particulars before the 2nd respondent and the same will be considered by the 2nd respondent.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The very purpose behind the compassionate appointment is an ex-gratia policy of the Government to provide immediate financial help to the family of a deceased employee. This is done in order to tide over the sudden crisis that results due to the death of a sole bread winner. A sudden death will leave the family without livelihood and it is only to deal with such situations, compassionate appointment is provided to one of the legal heirs of a deceased employee.

9. In the present case, the husband of the petitioner died in the year 2006, while he was in service. The petitioner submitted the application seeking for compassionate appointment in the year 2007. It is seen from records that the petitioner had also submitted the certificate issued by the Tahsildar explaining the indigent circumstances faced by the family. At the time, when the petitioner made the application in the year 2007, she was aged about 35 years and she had the physical ability to take up work.

However, unfortunately the application itself was taken up only in the year 2019 and by then the petitioner reached the age of 48 years. She felt that she will not be able to handle the work in view of her age and in view of her physical ailments. Therefore, the petitioner had requested the 2nd respondent to consider her son for compassionate appointment. In the meanwhile, the son of the petitioner had completed his B.E. course and admittedly the son of the petitioner was minor aged about 12 years at the time of the death of his father.

10. The 2nd respondent has rejected the representation made by the petitioner only on the ground that compassionate appointment cannot be considered for more than one legal heir. This is not a case where more than one legal heir is seeking for compassionate appointment. This is a case where due to lapse of time, the petitioner became old and she wants her son to be considered for compassionate appointment. Ultimately, one of the legal heir of the deceased is going to be considered for compassionate appointment and it can be either the petitioner or her son. A beneficial policy of the Government should be given such an expanded meaning, failing which it will defeat the whole purpose of providing compassionate appointment.

11. In the considered view of this Court, the 2nd respondent could have taken into consideration the request made by the petitioner and should not have rejected the request on mere hyper technical grounds. The 2nd respondent mis-directed in understanding the representation made by the petitioner, as if, more than one legal heir is seeking for compassionate appointment. The premise on which the 2nd respondent had rejected the representation is completely wrong and the 2nd respondent ought to have considered the representation made by the petitioner seeking for compassionate appointment for the son of the petitioner.

12. In view of the above discussion, this Court has no hesitation to interfere with the impugned order passed by the 2nd respondent dated 21.05.2019 and accordingly the same is quashed. The 2nd respondent is directed to again take the case of the petitioner on file and consider her representation seeking for compassionate appointment for her son. If the son of the petitioner is otherwise qualified for being considered for compassionate appointment, the same should not be rejected on the technical ground that he cannot substitute in the place of his mother or that the application made is barred by time. It should be construed as if the son of the petitioner has made the application in the year 2007, since the son is only replacing the mother who has become incapable of taking

up the compassionate appointment, due to age and the physical ailments suffered by her. Interest of justice will be served only if such an interpretation is given and the compassionate appointment of the son of the petitioner is considered.

13. In the result, this writ petition is allowed and the 2nd respondent is directed to consider the son of the petitioner for compassionate appointment and pass appropriate orders within a period of six weeks from the date of receipt of copy of this order. The son of the petitioner is directed to make a fresh representation to the 2nd respondent along with a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Secretary to Government,
State of Tamilnadu
Labour & Employment Department,
Secretariat,
Chennai-9.
2. The Director of Public Health,
and Preventive Medicine,
Chennai 600 006.
3. The Deputy Director of Health Services,
Coimbatore.

+1cc to Mr.N.Manoharan , Advocate SR.No. 3618

+1 cc to Government Pleader Sr.No. 3941

W.P.No.34750 of 2019

A.SK(25/02/2020)