

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on	28.02.2020
Pronounced on	29.06.2020

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH
W.P. (MD) No.694 of 2020

J.Lidwin Jeyanthirani

...Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division,
Bye-Pass Road,
Madurai-16.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records pertaining to the impugned order in **மதுரை/சட்டம்/15252/2018** dated 04.07.2019 passed by the sole respondent and to quash the same as unconstitutional.

For Petitioner : Mr.J.Sivaram

For Respondents : Mr.J.Senthilkumaraiah
Standing Counsel**O R D E R**

The petitioner's husband, who was employed as a Driver in the respondent Corporation, died in harness, on 27.02.2013. The petitioner's request for appointment on compassionate ground has been rejected through the impugned order dated 04.07.2019 on the ground that her application for such appointment is belatedly made after three years from the date of death of her husband. Challenging the same, the present Writ Petition has been filed.

2. Heard Mr.J.Sivaram, learned counsel for the petitioner and Mr.J.Senthilkumaraiah, learned Standing counsel for the respondent Corporation.

3. The petitioner herein claims to have given an application on 06.06.2013 seeking for compassionate appointment, the receipt of the same is denied by the respondent Corporation. According to the respondent, the petitioner's application dated 16.11.2017 alone was received by them, which is after the period of three years stipulated in the regulations. It is also stated in the impugned order that the petitioner's husband was placed under Contributory Pension Scheme and the petitioner has received all the monetary benefits.



4. I am not in agreement with the reasoning assigned by the respondent in the impugned order.

5. After the petitioner's husband died on 27.02.2013, the petitioner claims to have given a representation on 06.06.2013 seeking compassionate appointment. Since her representation was not considered in time, she had filed a Writ Petition in W.P.No.15252 of 2018 and by an order dated 28.03.2019, this Court had taken into account the representation made by her on 06.06.2013 and directed the respondent to consider the same within a stipulated time. When the order came to be passed by this Court, the respondent Corporation was represented by their counsel.

6. If at all, the respondent was aware that the petitioner's claimed to have given a representation on 06.06.2013 is not correct, there was a duty cast on them to bring it to the notice of this Court when the order came to be passed on 28.03.2019. The alternate course available to the respondent was to have brought to the notice of this Court about the non receipt of the representation dated 06.06.2013 by way of a Review Petition or exercise their option to challenge the order in W.P.No.15252 of 2018 by way of an appeal. Having failed to bring it to the notice of the Court about the alleged non receipt of the representation and not having invoked their rights of either filing a review or an appeal against the said order, it is not now open to the respondent to state that they have not received such a representation, particularly, when this Court had earlier directed them to consider the representation dated 06.06.2013, within a stipulated time.

7. Apart from the above observations, the Hon'ble Division Bench of this Court had earlier in an order passed in W.A.(MD) No.1400 of 2011 dated 16.12.2015 in the case of **S.Velraj Vs. The Superintendent Engineer, TNEB, Tirunelveli and another**, had held that the three years limitations prescribed for making an application for compassionate appointment cannot be applied in a strait jacket formula and each and every case has to be approached differently, based on the facts. The Scheme for appointment on compassionate ground to the children of the deceased employee is a welfare scheme, to tide over the financial constraints of the bereaved family due to the sudden demise of the breadwinner of the family.

8. In the present case, when the employee died on 27.02.2013, he was survived by the petitioner, who is his wife and two minor children 17 years and 13 years respectively. Apparently, the sole breadwinner of the family had died and it is in these circumstances that the welfare schemes to redress the grievances of a bereaved family are framed. By applying the ratio laid down by the Hon'ble Division Bench in the aforesaid decision, this Court is of the view that, petitioner's case requires to be considered positively. The



other observations made in the impugned order that the petitioner's husband was under the Contributory Pension Scheme also cannot be an impediment for refusal to issue an appointment on compassionate grounds.

9. For all the foregoing reasons, the impugned order passed by the respondent dated 04.07.2019 is set aside. Consequently, there shall be a direction to the concerned respondent to issue an appointment order to the petitioner herein, on compassionate grounds, to such post that may be proportionate to the petitioner's qualification. The concerned respondent shall ensure that the appointment order is issued atleast within a period of four weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sm/DP

To

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Division,
Bye-Pass Road,
Madurai-16.

+1 CC to M/s.J.SIVARAM, Advocate (SR-9896[F] dated 03/03/2020)

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29.06.2020

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