



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.02.2020

PRONOUNCED ON : **28.02.2020**

WEB COPY

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.2369 of 2020

R.Ragurama Rajan

...Petitioner

/vs./

1.The Managing Director,
Tamilnadu State Transport Corporation (Madurai) Limited,
By-pass Road, Madurai.

2.The General Manager,
Tamilnadu State Transport Corporation (Madurai) Limited,
By-pass Road, Madurai.

3.The Branch Manager,
Ellis Nagar Branch,
Tamilnadu State Transport Corporation (Madurai) Limited,
Ellis Nagar, Madurai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders passed by the 1st respondent in Niruvagam/A2/3336/2019 dated 10.09.2019 confirming the 2nd respondent's order in Niruvagam/A2/5071/2013 dated 06.01.2014, quash the same and consequently, direct the respondents to appoint the petitioner as Conductor under compassionate appointment.

For Petitioner : Mr.V.P.Rajan

For Respondents : Mr.J.Senthil Kumaraiah
Standing Counsel

ORDER

The grievance of the petitioner is that his claim for appointment on compassionate ground has not been considered by the respondents. It is not in dispute that the petitioner herein is the legal heir of the deceased employee and as such, is entitled to seek for compassionate appointment, after the death of the said employee.



2. In the case in hand, the Government employee (petitioner's father) had died on 06.06.1999, while he was in service. The widow of the deceased employee claims to have made an application seeking for compassionate appointment on compassionate ground on 18.01.2001. Since the widow's application was not acted upon, her son, who was a minor at the time of his father's death had made an application on 13.10.2010, after attaining majority. The claim came to be rejected through the impugned order stating that the application seeking compassionate appointment was not made within a period of three years from the date of death of the Government employee as per the Government Orders in vogue.

3. It is the case of the petitioner that after his father's death, his mother had made representations from 09.09.1999 onwards seeking for compassionate appointment in favour of the petitioner herein. It is also his specific case that on 18.01.2001, his mother had made such a representation and since the respondents had not acted upon the same, she had made another representation on 05.07.2010 highlighting her earlier claim. Pursuant to such a representation, the third respondent had obtained no objection from the other legal heirs on 13.10.2010. However, since no further action was taken, the petitioner had preferred a Writ Petition in W.P.(MD)No.2435 of 2013 and this Court, by an order dated 02.12.2013, had directed the respondents to consider the petitioner's mother's representation dated 05.07.2010 within 8 weeks. Pursuant to the orders of this Court, the present impugned order dated 06.01.2014 came to be passed stating that no applications for compassionate appointment has been received by the respondents within 3 years from the date of death of the employee and therefore, the request made on 05.07.2010 does not require consideration.

4. When the petitioner's mother had earlier filed Writ Petition in W.P.(MD)No.2435 of 2013, it was her specific case that she had given an application on 18.01.2001 seeking for compassionate appointment and in her subsequent representation dated 05.07.2010, she had highlighted the earlier application dated 18.01.2001. Perusal of the mother's application dated 05.07.2010 reveals that she had referred to her earlier application dated 18.01.2001. When the Writ Petition in W.P (MD).No.2435 of 2013 came to be disposed, the respondents were represented by their Standing counsel. In spite of the petitioner's mother's specific case that she had made a representation on behalf of her son on 18.01.2001, no counter affidavit was filed by the respondents denying such a claim nor had the respondents objected to the said claim at the time when the order came to be passed. This Court in its order dated 02.12.2013 had also observed that the petitioner's mother had been making several representations for compassionate appointment from 09.09.1999 onwards.



5. In the affidavit filed in support of the present Writ Petition, the petitioner had also referred to his mother's representation dated 18.01.2001, which has not been countered by the respondents. In the light of these uncontraverted pleadings and by taking into account the claim of the petitioner that his mother had made an application on 18.01.2001 itself, which is within a period of three years from the date of death of the employee, it can be said that such a claim, in the absence of any counter to the effect, could be accepted. It is pertinent to mention that the petitioner, who was born on 08.06.1988, was a minor when his father expired and therefore could not have made an independent application on his own. However, without consideration of these aspects, the impugned order has been passed, rejecting the petitioner's mother's claim.

6. The reasoning of the respondent in rejecting the application cannot be sustained, in view of various judicial pronouncements of this Court, to the effect that when the claimant was a minor at the time of the death of his father and since the mother of the claimant applied within time, the Court is of the opinion that the claimant, after becoming major should have been granted compassionate appointment. One such order passed by this Court in **W.P.No.24964 of 2020** dated **03.12.2010** in the case of **Mohanambal vs. Director, Land and Survey Department, Kancheepuram District and Ors.**, reported in **2011 (1) CTC 349** has placed reliance on two judgments of the Hon'ble Supreme Court of India and ultimately held that when the claimant was a minor at the time of the death of her father and since the mother of the claimant applied within time, the Court is of the opinion that the claimant, after becoming major should have been granted compassionate appointment. The relevant portion of the order reads as follows:

'9. Similar issue was considered by the Supreme Court in the decision in Syed Khadim Hussain v. State of Bihar (2006) 9 SCC 195 wherein also the Supreme Court considered the fact that the wife of the deceased, having applied for compassionate appointment in time and as she was found not eligible, the application submitted by the other legal heir was directed to be considered even after the lapse of eleven years. In paragraphs 5 and 6 of the said decision the Supreme Court held thus,

5. We are unable to accept the contention of the counsel for the State, in the instant case, the widow had applied for appointment within the prescribed period and without assigning reasons the same was rejected.



WEB COPY

When the appellant submitted the application he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection, of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.

6. As the widow had submitted the application in time, the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the Appellant and give him appropriate appointment within a reasonable time atleast within a period of three months. The appeal is disposed of in the above terms. No costs.

10. The learned Government Advocate cited the decision in Sanjay Kumar v. State of Bihar (AIR 2000 SC 2782) which has no application to the facts in this case, as the claimant in the cited case applied for compassionate appointment for the first time after eight years. Similar claim of compassionate appointment for the first time after eight years. Similar claim of compassionate ground appointment was rejected in the decision in



Punjab National Bank v. Ashwini Kumar Taneja (AIR 2004 SC 4155) on the ground of non existence of financial hardship. Relief was denied to a person was not found traceable for seven years even thereafter within five years, no claim for compassionate appointment was made by the legal heir.

11. Similar claim of the deceased Tamil Nadu Electricity Board Employee was considered and relief granted by the Division Bench of this Court in Indirani Ammal vs. Chief Engineer, WEB W.A.No.3050 of 2003 dated 08.03.2005. The said decision was confirmed by the Supreme Court in Civil Appeal No.2039 of 2006 dated 30.03.2010. Another Division Bench of this Court in W.A.No.42 of 2007 dated 02.07.2009 also took the same view, which was also confirmed by the Supreme Court in S.L.P.(C) No.8305 of 2010 dated 06.07.2010. The contra view taken by another Division Bench of this Court was set aside by the Supreme Court in Civil Appeal No.2858-2859 of 2010 dated 30.03.2010. The said order reads as follows:

"Civil Appeal Nos.2858-2859 of 2010 (arising from S.L.P.(C)Nos.5068-5069 of 2009)

Leave granted.

Heard learned Counsel for the parties.

These appeals have been filed against the impugned judgment of the High Court of Madras dated 29.09.2006 and subsequent order dated 25.08.2008 passed in the review application.

The Division Bench of the High Court has reversed the judgment of the learned Single Judge only on the ground of delay who directed compassionate appointment to the Appellant. The Appellant was a minor at the time of the death of his father and since the mother of the Appellant applied within time, we are of the opinion that the appellant, after becoming major should have been granted compassionate appointment.

Accordingly, we allow these appeals, set aside the impugned judgment of the Division Bench and



restore the judgment of the learned Single Judge. No costs"

12. Here in this case, the petitioner's mother applied for compassionate appointment within one year and she was not given appointment due to want of minimum qualification of 8th standard and the petitioner being the only other legal heir, pursuing the matter and agitating her right for all these years. In the light of the present financial status of the petitioner, the decision in Syed Khadim Hussain v. State of Bihar (supra) applies to the facts of this case."

7. The aforesaid order is self explanatory. As such, the issue as to whether the claimant, who was minor at the time when the employee had expired, had or had not made an application within three years from the date of death becomes immaterial. What would suffice is that whether the mother of the claimant (widow of the deceased employee) had made an application seeking for compassionate appointment within three years from the date of death of the employee.

8. In the instant case, the petitioner's mother had applied for compassionate appointment in 18.01.2001, which is well within the period of three years from the date of death of the Government employee. By applying the ratio laid down in the aforesaid decision, the petitioner would be entitled for appointment on compassionate grounds.

9. It would be pertinent to point out herein that in all cases where claim is made for compassionate appointment, the concerned authorities are required to act efficaciously and speedily, since the very purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread-earner in the family and that there should not be any delay in such appointments.

10. The Hon'ble Apex Court in the case of **Sushma Gosain vs. Union of India** reported in **1989 (4) SCC 468** had held as follows:

'It must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no



suitable post for appointment supernumerary post should be created to accommodate the applicant.'

11. The same ratio was reiterated by the Hon'ble Apex Court in the case of **Canara Bank vs. M.Mahesh Kumar** reported in **2015 (7) SCC 412**.

WEB COPY

12. In the light of the above observations and findings, the impugned order passed by the 1st respondent in Niruvagam/A2/3336/2019 dated 10.09.2019 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 (4) weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Managing Director,
Tamilnadu State Transport Corporation (Madurai) Limited,
By-pass Road, Madurai.
- 2.The General Manager,
Tamilnadu State Transport Corporation (Madurai) Limited,
By-pass Road, Madurai.
- 3.The Branch Manager,
Ellis Nagar Branch,
Tamilnadu State Transport Corporation (Madurai) Limited,
Ellis Nagar, Madurai.

+1 CC to M/s.K.VIRALINATHAN, Advocate (SR-9858[F]

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate (SR-9842[F]

Order made in
W.P.(MD)No.2369 of 2020
Dated:28.02.2020

sm/DP

SDS (05.08.2020) 7P-6C

<https://hcservices.ecourts.gov.in/hcservices/>