



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:14.10.2020
CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.[MD]No.5923 of 2019

and

W.M.P(MD) No.4749 of 2019

WEB COPY

S.Maruthamuthu

... Petitioner

Vs.

The District Collector,
Dindigul District,
Dindigul.

... Respondent

PRAYER : This Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings issued by the respondent in O.Mu.No.13732/2017/A3 dated 03.05.2017 and quash the same and consequently directing the respondent herein to appoint the petitioner in a suitable post under the compassionate grounds within the time stipulated by this Court.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : Mr.K.P.Narayanakumar
Special Government Pleader

O R D E R

This Writ Petition has been filed to quash the impugned proceedings issued by the respondent in O.Mu.No.13732/2017/A3 dated 03.05.2017 and consequently to direct the respondent herein to appoint the petitioner in a suitable post under the compassionate grounds within the time stipulated by this Court.

2.The learned counsel for the petitioner would submit that the petitioner's father namely S.Shanmugam, S/o.Subbaiah Pillai died on 29.12.2016, while he was working as a Village Assistant at D.Gudalur Village, Vedaasandoor Taluk, Dindigul District, due to accident. Thereafter, the petitioner has obtained a death certificate of his father on 11.01.2017 along with legal heir certificate. The petitioner has submitted an application along with all the above said certificates on 24.04.2017, seeking compassionate appointment to the post of Village Assistant, for which he had requisite qualification. After receipt of the same, the respondent has



rejected the application vide proceeding in O.Mu.No.13732/2017/A3 dated 03.05.2017, stating that the petitioner has crossed the age of 35 years and he is not eligible to provide any compassionate appointment.

3.The learned counsel for the petitioner would further submit that the rejection of the application on the petitioner is totally illegal and the respondent can provide employment under the compassionate ground upto the age of 40 years. In this regard, he refers the Rule 8 of the Tamil Nadu Village Servant Service Rules, 1980, which is extracted hereunder:-

8.General Qualification relating to age

I) No person shall be eligible for appointment to the post of a Village Servant unless he has completed the age of twenty one years and has not completed the age of forty years on the date noticed as the last date for the receipt of application:

provided that in case of candidates belonging to schedule caste and scheduled tribes, the upper age limit shall be forty five years"

4.By referring the above said rule, the learned counsel for the petitioner submitted that the above said Rule is permitted the age limit upto 40 years, for the Backward class, for appointment to the post of a Village Servant. There is no prohibition from appointing any person under the compassionate ground beyond 35 years. Therefore, the petitioner is entitled for compassionate appointment and seeks appropriate order before this Court.

5.On the other hand, Mr.K.P.Narayanakumar, learned Special Government Pleader would submit that since the petitioner crossed the age limit of 35 years, he is not entitled for any appointment under the compassionate ground. But the rejection order was made only on the ground of age limit and no other specific ground for rejection has been mentioned. He would further submit that as per G.O.Ms.No.18 Labour and Employment (Q1) Department dated 23.01.2020, the maximum age limit has been determined as 40 years for the appointment under the compassionate ground for the legal heirs of the deceased at the time of applying.

6.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

7.In the present case, the only issue to be decided is whether the compassionate appointment can be made to the person, who has completed 35 years or not. This Court have come across many number of cases, wherein the rejection of compassionate appointment was made citing many other reasons. But in the present case, the rejection was made only with reference to the age of the petitioner. Therefore, this Court would continue to discuss with regard to the compassionate appointment which can be rejected on the basis that

<https://hds.certriv.org/> as crossed the age limit of 35 years. As per Rule 8



of the Tamil Nadu Village Servant Service Rules, 1980, those who are completed the age of twenty one years and has not completed the age of forty years as on the date of the application, are entitled for appointment of any Government service under the category of Backward class. In the present case, the petitioner belongs to the Backward class and also not crossed the prescribed age limit at the time of application and the respondent has to necessarily provide Government service under the compassionate ground.

8.This Court is of the considered view that they cannot have different qualification and different age limit for the compassionate appointment and for the regular appointment by recruitment in the normal circumstances by the Government. Even in the compassionate appointment, they may consider and provide age relaxation by providing additional age limit than the normal appointment. At this point of time, the learned counsel for the petitioner referred the order of this Court in the case of **V.Rajakumaran v. the Secretary to Government and others** in **W.P. (MD) No.20142 of 2013**, wherein this Court has taken a view that by referring the age limit of 35 years, they cannot restrict for compassionate appointment, when they are providing appointment for general recruitment by the Government by fixing age limit of 40 years in terms of Tamil Nadu Village Servant Service Rules, 1980. In this regard, it would be appropriate to incorporate the relevant portion of this order hereunder:-

2.The learned counsel appearing on behalf of the writ petitioner states that the father of the writ petitioner Thiru Vellaiyan as employed as Village Servant (Thalayali) and passed away on 05.09.2012, on account of cardiac arrest. The family of the deceased employee was in penurious circumstances, on account of the sudden death of the father of the writ petitioner.

3.The writ petitioner made an application seeking compassionate appointment. The same was rejected in proceedings dated 21.06.2013, on the ground that the writ petitioner was over-aged and crossed 35 years of age. The learned counsel appearing for the writ petitioner states that the age limit prescribed for the post of Village Servant in the Tamil Nadu Village Service Rules, 1980, is 40 years for General candidates and 45 years for Scheduled Caste and Scheduled Tribe candidates. The petitioner is a Scheduled Tribe candidate and therefore, the age limit prescribed as per the rules is 45 years. Thus, the respondents have erroneously passed on order of rejection on the ground that the age limit prescribed is 35 years. When, it is brought to the notice of this Court that maximum age limit prescribed is 45 years for Scheduled Caste/Scheduled Tribe candidates, more specifically for



the post of Village Servant, the order of rejection is perverse and contrary to the rules, in respect of the age limit prescribed.

4.The learned Government Advocate opposed the contention of the learned counsel for the petitioner by stating that the age limit prescribed under the Rules are only for direct recruitment and not for appointment on compassionate ground. It is pertinent to note that in respect of recruitment, the Special Rules are to be followed and compassionate appointment though is a scheme, the recruitment rules are to be followed by the competent authorities. Age limit, educational qualifications and other criteria are to be followed for appointment on compassionate ground also. Such being the factum of the case, this Court is of the opinion that the age limit under the Special Rules are to be followed even for compassionate appointment.

5.Under these circumstances, this Court is of the opinion that the reasons furnished in the order impugned in this writ petition is contrary to the Special Rules made in Tamil Nadu Village Servants Service Rules, 1980. The Government issued G.O.Ms.No.141, Revenue, dated 21.01.1981, and the respondents are bound to follow the Special Rules before considering the application submitted by the writ petitioner for compassionate appointment.

6.Under these circumstances, the impugned order passed by the respondent in proceedings Na.Ka.1347/2013/C dated 21.06.2013 is quashed and the third respondent is directed to reconsider the case of the writ petitioner for compassionate appointment on merits and in accordance with law and taking note of the Special Rules and pass orders, within a period of twelve weeks from the date of receipt of a copy of this order.

9.In view of the above, I do not find any merit in the submission made by the learned Special Government Pleader and also there is no substance in the submission made by the respondent and the rejection of the application by referring that the petitioner has crossed the age limit of 35 years does not have any merit and the same is liable to be quashed. Therefore, I propose to quash the impugned order dated 03.05.2017 in O.Mu.No.13732/2017/A3.

10.Accordingly, this Writ Petition is allowed and the impugned order dated 03.05.2017 passed in O.Mu.No.13732/2017/A3 is set aside and the respondent is directed to provide compassionate appointment to the petitioner within a period of two months from the date of



receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cp

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The District Collector,
Dindigul District,
Dindigul.

+1 CC to M/s.GP (SR-20172[F] dated 15/10/2020)

W.P. [MD]No.5923 of 2019

and

W.M.P (MD) No.4749 of 2019

14.10.2020

CK (CO)

KK(28.10.2020) 5P 3C