



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**
AND
THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.A. (MD) No.1070 of 2018

B.Vairakumar : Appellant/Petitioner

Vs.

The Superintendent of Prison,
Central Prison,
Madurai - 16. : Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court dated 06.02.2018, made in W.P.(MD) No.207 of 2018.

Prayer in WP(MD). 207/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for records of the impugned order No.14040/Po.1/2012 dated 19/10/2015 passed by the respondent and quash the same as illegal and consequently direct the respondent to provide suitable employment to the petitioner on compassionate ground within stipulated time.

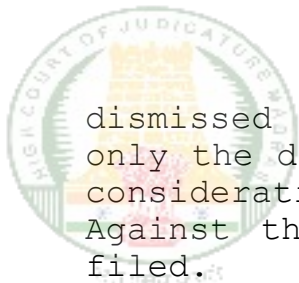
For Appellant : Ms.P.Raja Rajeshwari

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **N.KIRUBAKARAN, J.**)

The appellant's father M.Balamurugan was employed as a Grade - II Constable in Central Prison, Madurai and he died in harness on 16.03.2010. Within 3 years of his death, an application for compassionate appointment was made on 25.09.2012. The said application was rejected by the respondent by order dated 19.10.2015 in No.14040/Pa.1/2012 on the ground that the applicant was a minor at the time of application. Challenging the same, the appellant filed W.P.(MD) No.207 of 2018. It was contended before the learned Single Judge that the appellant attained majority, when the application was considered. However, the learned Single Judge



dismissed the Writ Petition on the ground that what is relevant is only the date on which the application was made and not the date of consideration of the application and dismissed the Writ Petition. Against the said Writ Petition, the present Writ Appeal has been filed.

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2. Heard Ms.P.Raja Rajeshwari, learned counsel for appellant and Mrs.J.Padmavathidevi, learned Special Government Pleader appearing for the respondent and perused the materials available on record.

3. The learned counsel for the appellant would submit that the finding of the learned Single Judge is against the dictum laid down by the Hon'ble Apex Court in **Syed Khadim Hussain v. State of Bihar [(2006) 9 SCC 195]**, which was relied on by the Division Bench of this Court in **W.A. (MD) No.788 of 2017, dated 02.08.2017**, in the matter of the **Assistant Director of Survey Land Records and another v. S.Uma Maheswari**.

4. It is evident from the decision of the Hon'ble Apex Court in **Syed Khadim Hussain v. State of Bihar [(2006) 9 SCC 195]** that what is relevant is, when the order of rejection was passed. On the date of order, the appellant attained majority. In **Uma Maheswari's** case, the appeal filed by the Government was dismissed and the order giving relief was sustained. Paragraph 5 of **Uma Maheswari's** case reads as follows:

"5. The contention of the appellants is directly answered by the decision of the Hon'ble Supreme Court, in the case of **Syed Khadim Hussain Vs. State of Bihar and Others**, reported in **(2006) 9 SCC, 195**. The facts obtaining in the said decision and the present case are similar. In the said case also when the applicant submitted an application for compassionate appointment, he was minor, but, when the order of rejection was passed the applicant attained majority. When the applicant made application for compassionate appointment in the year 2008, the authorities did not immediately pass the order of rejection. The order of rejection came to be passed only in the year 2010. By then the writ petitioner had attained majority. Therefore, the learned single Judge rightly set aside the order impugned in the writ petition. In fact, the learned Judge had followed earlier precedents of this Court. We see no reason to differ."

In view of the above, the order of the learned Single Judge is liable to be set aside.

5. Accordingly, the Writ Appeal is allowed and the order of the learned Single Judge dated 06.02.2018, made in W.P. (MD) No.207 of



2018 and the impugned order of the respondent in No.14040/Po.1/2012 dated 19.10.2015 are set aside and respondent is directed to give compassionate appointment to the appellant, considering the waiting list for compassionate appointment. No costs.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

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 Superintendent of Prison,
Central Prison,
Madurai - 16.

+1 CC to M/s.C.ARUL VADIVEL, Advocate (SR-24461[F] dated 08/12/2020)

W.A. (MD) No.1070 of 2018
04.12.2020

AP(08/12/2020) 3P 3C