



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	28.02.2020
Pronounced on	29.06.2020

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CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.13606 of 2016

and

W.M.P. (MD) No.10142 of 2016

K.Sujithra

...Petitioner

Vs.

1.The Inspector General of Registration,
O/o.Inspector General of Registration,
Santhome High Road,
Chennai.

2.The District Registrar,
O/o.District Registrar,
Ramanathapuram.

3.The Deputy Registrar,
Keezhakkarai,
Ramanathapuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the first respondent impugned order vide No.15290/K2/2009 dated 02.12.2009, quash the same and consequently directing the first respondent to provide employment to the petitioner's on compassionate ground.

For Petitioner : Mr.M.Subash Babu

For Respondents : Mr.V.Anand

Government Advocate

O R D E R

The petitioner's father, who was employed as a Junior Assistant in the Registration Department, died in harness, on 23.12.1991. The petitioner, having born on 01.10.1989 was 2 years old at the time of death of her father. She became major on 01.10.2007 and her mother made an application on behalf of the petitioner on 25.02.2008, seeking for compassionate appointment. The petitioner had also made another application on 12.03.2009. Her request came to be rejected through the impugned order dated 02.12.2009, stating that the application was belatedly made and against the time stipulated in G.O.Ms.120, Labour and Employment Department, dated 26.06.1995. The



rejection order is put under challenge in the present Writ Petition.

2. Heard Mr.M.Subash Babu, learned counsel for the petitioner and Mr.V.Anand, learned Government Advocate appearing on behalf of the respondents.

3. The present petition deserves to be allowed on two grounds. Firstly, the three years period stipulated in G.S.Ms.No.120, Labour and Employment, dated 26.06.1995 would be made applicable only to the Government Servants who died on or after 26.06.1995 as per the Government clarification in G.O.Ms.No.1479, Home (POL.XV) Department, dated 09.11.1999. As such, the limitation prescribed under G.O.Ms.No.120, Labour and Employment, dated 26.06.1995 is not applicable to the petitioner's case since his father died on 23.12.1991. Accordingly, reliance on G.O.Ms.120, Labour and Employment, dated 26.06.1995 in the impugned rejection order is unsustainable.

4. Secondly, this Court in several decisions have already taken a view that a minor legal heir would be entitled to make an application within three years after she becomes major. One such order passed by this Court in **W.P.No.26343 of 2012** dated **23.11.2016** in the case of **M.Sathish Kumar vs. the Director of School Education and others**, had placed reliance on two orders of the Hon'ble Division Benches of this Court and ultimately held that, when an application is made within three years from the date of attaining majority, the claimant would be entitled for appointment on compassionate grounds. The relevant portion of the order reads as follows:

'4. In this context, a Division Bench of this Court in a judgment reported in The Chief Engineer/Personnel, T.N.E.B., & another Vs. S.Suder reported in MANU/TN/0635/2009 was held as follows:

"4. In the judgment reported in 2001 Writ L.R.601 in the case of "Ramadoss.D. Vs. The Chief Engineer, T.N.E.B.", this Court (D.Murugesan,J) directed the consideration of the application made within a period of three years after attaining the majority by placing reliance on the very same Circular in B.P.No.46, dated 13.10.1995.

5. Subsequently, in the judgment reported in 2002(4) L.L.N.1132, (D.Murugesan,J.), in the case of "P.Ravi V.Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on



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compassionate grounds was directed to be considered.

6. Justice P.D. Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P.No.19673 of 2003, in the order dated 23.09.2003, in the case of "J. Jayakaran Vs. The Superintending Engineer, Theni Electricity Distribution Circle, Theni" and the application for appointment on compassionate grounds was directed to be considered.

7. Justice K. Govindarajan has also taken the same view in Writ Petition No.13099 of 2003, order dated 30.10.2003, in the case of "G. Muthamilselvan V. The Chief Engineer (Personnel) and Anr."

8. Justice F.M. Ibrahim Kalifulla has also taken the same view in the decision reported in 2004(3) CTC 120, (2004) MLJ 238 in the case of "Meer Ismail Ali. T. V. The Tamil Nadu Electricity Board". We are told that the order in the said case of "Meer Ismail Ali" was confirmed in the Writ Appeal by the Division Bench in W.A.No.4008 of 2004, by judgment dated 1.12.2004 and as against the said judgment dated 1.12.2004, the Special Leave Petition in Civil Appeal No.6387 of 2005, was also dismissed by the Supreme Court, by judgment dated 4.4.2005."

5. In a very similar issue, a Division Bench of this Court in W.P.No.3050 of 2003 observed as follows:

"9. Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No.3050 of 2003 in the case of "Indiraniammal V. The Chief Engineer (Personnel) and Anr." and by judgment dated 08.03.2005, the Division Bench set aside the impugned order therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to consider the application.



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10. There cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, by-passing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints of a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the office of the Assistant Engineer, TNEB, Kazhuvanthilai, Kanyakumari District, died due to illness on 07.03.1998. At the time of the death of his father, the respondent was 15 years old and for the purpose of making application for appointment on compassionate grounds, he should have completed 18 years. Hence, he could not make any application for appointment on compassionate grounds. By placing reliance on B.P.No.46, dated 13.10.1995, he made application on 3.9.2002, within a period of four days from the date of his attaining majority, i.e., 18 years. That application was rejected on the ground that the same cannot be entertained as per the Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis of the Memo, dated 6.4.2002.

12. As we have already referred that the application



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for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board proceedings in B.P.No.46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority."

6. If the above proposition is applied to the present facts of the petitioner, then the petitioner would be entitled for an appointment on compassionate ground, since the application has been made within a period of three years from the date of attaining majority. Since this application for compassionate appointment was rejected on the sole ground that the same was time barred and by applying the ratio in the decision of the Division Bench, the impugned order cannot be sustained and is liable to set aside. Accordingly, the impugned order dated 31.01.2012 passed by the third respondent is quashed. '

5. The aforesaid order is self explanatory. As such, the issue as to whether the widow or any other legal heir, who was major 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 as to whether the minor legal heir had made an application seeking for compassionate appointment within three years from the date she had attained her majority.

6. In the instant case, the petitioner was born on 01.10.1989 and she became major on 01.10.2007. The application for compassionate appointment by the petitioner was made on 12.03.2009, which is within a period of three years from the date she had attained majority. Therefore, even on this ground, the petitioner's application is deemed to be made within time and therefore, the



impugned order is liable to be quashed on this ground also.

7. Accordingly, the impugned order passed by the first respondent in his proceedings No.15290/K2/2009 dated 02.12.2009 is set aside. Consequently, there shall be a direction to the first 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 eight weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

sm/DP

To

1.The Inspector General of Registration,
O/o.Inspector General of Registration,
Santhome High Road,Chennai.

2.The District Registrar,
O/o.District Registrar,
Ramanathapuram.

3.The Deputy Registrar,
Keezhakkarai,
Ramanathapuram District.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-9800[F] dated 03/03/2020)

Order made in
W.P. (MD) No.13606 of 2016
and
W.M.P. (MD) No.10142 of 2016
29.06.2020

SMA/17/07/2020/6P/5C