

**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.4222 of 2016

V.Veiluntha Rajan

...Petitioner

Vs.

1. Government of Tamil Nadu,
Rep., by Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.

3. The Commissioner,
Tuticorin Corporation,
Tuticorin.

...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 from the third respondent in his proceedings No.Na.Ka.No.C5/10322/2013 dated 23.07.2014 and to quash the same and consequently direct the respondents to provide an appointment to the petitioner under the compassionate appointment in their Department.

For Petitioner : Mr.Esakkiappan

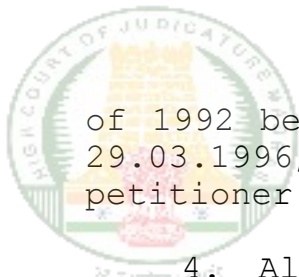
For Respondents : Mr.M.Jeyakumar, AGP

O R D E R

Challenging the order passed by the third respondent in his proceedings in Na.Ka.No.C5/10322/2013 dated 23.07.2014, the present Writ Petition has been filed.

2. Heard Mr.Esakkiappan, learned counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader, appearing on behalf of the respondents.

3. The petitioner's father V.S.Veerapaghu, who was appointed as a Helper in the third respondent Corporation, died in harness, on 29.06.1998. During his service, he was terminated on 28.03.1990, which came to be challenged by the petitioner's father in I.D.No.296



of 1992 before the Labour Court, Tirunelveli and by an award dated 29.03.1996, the third respondent was directed to reinstate the petitioner's father into service with back-wages.

4. Along with the petitioner's father, two other similarly placed workers, who were also terminated likewise, challenged their termination in I.D.Nos.298 & 295 of 1992, which came to be allowed on 29.03.1996. The award dated 29.03.1996 came to be challenged by the third respondent in W.P.Nos.25380 and 25381 of 2001 and this Court, had dismissed the Writ Petitions by observing that the two other similarly placed workers, cannot be treated as temporary employees, since the third respondent herein had failed to substantiate that they were working on temporary basis. The aforesaid order dated 20.01.2006 came to be challenged in W.A.Nos.305 & 306 of 2007 and by an order dated 28.02.2007, the observations made by the learned Single Judge in W.P.Nos.25380 & 25381 of 2001 came to be confirmed.

5. Similarly, the third respondent herein had also challenged the award passed in favour of the petitioner's father in I.D.No.296 of 1992, through a Writ Petition in W.P.No.34593 of 2003 and this Court, had relied upon the orders passed in favour of the similarly placed workers in W.P.Nos.25380 & 25381 of 2001 as well as the Hon'ble Division Benches orders in W.A.Nos.305 & 306 of 2007 and thereby dismissed the Writ Petition filed by the third respondent herein.

6. In this background, the petitioner herein had given a representation on 25.06.2012 to the respondents herein seeking for appointment on compassionate grounds. Since no further action was taken on the petitioner's representation, he filed a Writ Petition in W.P.No.28779 of 2014 and this Court, by an order dated 17.06.2014 observed that the petitioner's request cannot be denied on the ground that his father was terminated from service in the year 1990 and thereby directed the respondents to consider his representation dated 25.06.2012 within a stipulated time.

7. In consequence to the aforesaid order passed by this Court, the third respondent had passed the impugned order dated 23.07.2014, rejecting the petitioner's request for compassionate appointment on the grounds that the petitioner's father was not a permanent employee and the application for compassionate appointment was not made within a period of three years from the date of death of the employee. This order is put under challenge in the present Writ Petition.

8. The respondents have not disputed the fact that the petitioner's father was employed under the third respondent herein and during his employment, he was terminated from service, which termination order came to be set aside by the Labour Court in I.D.No.296 of 1992 and the award dated 29.03.1996 has become final.

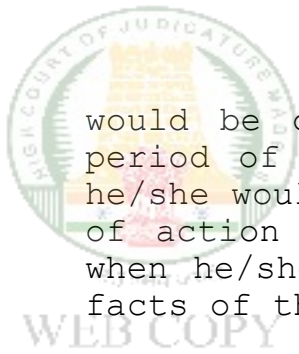


When the petitioner's father died on 29.06.1998, the petitioner was a minor. As such, in all possibilities, he could not made an application seeking for compassionate appointment at that point.

9. One of the ground on which the petitioner's request for compassionate appointment came to be rejected is that the application was not made within a period of three years from the date of death of the petitioner's father. As stated earlier, the Labour Court, Tirunelveli had passed an award on 29.03.1996 setting aside the illegal termination of the petitioner's father and thereby directed for reinstatement. While passing such an award, the Labour Court had rendered a finding that the petitioner's father, who was employed as Helper for collection of cycle parking charges under the third respondent herein, was a job which is permanent in nature. This award came to be challenged by the third respondent herein, by way of a Writ Petition in W.P.No.34593 of 2003, which came to be dismissed. Accordingly, the observations made by the Labour Court in the award dated 29.03.1996 passed in I.D.No.296 of 1992, that the petitioner's father was engaged in a job of permanent nature was also affirmed.

10. When the petitioner's father 's employment itself was under challenge before this Court in W.P.No.34593 of 2003, the respondents cannot expect the petitioner herein to make an application during the pendency of such a proceedings. Even if such an application has been made, the third respondent may not have considered such an application, when they had already preferred to challenge the petitioner's father's award passed in I.D.No.296 of 1992, wherein, the Labour Court had rendered a finding that the petitioner's father was engaged in a job of permanent nature and as such, the making of an application would have been a futile exercise. Only when this Court had dismissed the third respondent's Writ Petition in W.P.No.34593 of 2003, the petitioner's right to make an application for compassionate appointment had arisen. The Writ Petition came to be dismissed on 29.11.2001 and the petitioner herein had made an application on 25.06.2012.

11. Furthermore, the petitioner was aged about 14 years when his father died and his mother had been defending the Writ Petition filed by her husband all along. In a case in **W.P.No.3050 of 2003**, a Division Bench of this Court had ruled that an application for compassionate appointment made within a period of three years from the date when a minor legal heir of the deceased employee attains majority, is legally sustainable. This decision was followed by this Court in various other orders, including the order passed in the case of **H.Sridevagi V. The Superintendent of Police, Ramanathapuram District, Ramanathapuram in W.P. (MD) No.3539 of 2020**. The ratio laid down by the Hon'ble Division Bench in the aforesaid decision is that the cause of action for a minor legal heir would arise only when he/she attains majority, since such minor legal heir



would be disentitled to make an appropriate application within a period of three years from the date of death of the employee, as he/she would have been a minor even then. In other words, the cause of action for a minor for making an application would arise only when he/she attains majority. Such a ratio is akin to the present facts of the case also.

12. The petitioner was a minor at the time when his father died and therefore, the question of making an application within a period of three years from the date of death of his father would not arise. Secondly, the third respondent herein had been challenging the findings of the Labour Court, that the petitioner's father was not in a permanent employment as well as the award of reinstatement. When such a proceedings were pending, the question of filing an application for compassionate appointment, will not arise. By applying the ratio laid down in the judgments cited above, it can be said that the petitioner would be entitled to make an application within period of three years from the date when the cause of action arises.

13. Apparently, in this case, such a representation was given on 25.06.2012, which is within a period of three years from 29.11.2011, when the Writ petition filed by the third respondent came to be dismissed and on which day, the cause of action arose. Hence, the reasons in the impugned order that the petitioner's application was not made within a period of three years from the death of the employee cannot be sustained.

14. The other reasons assigned by the third respondent is that the petitioner's father was only a temporary employee. This reasoning again is misconceived when the petitioner's father had challenged his termination, the Labour Court had rendered a specific finding that the third respondent had not established that the petitioner's father was not a permanent employee. The other findings was to the effect that the petitioner's father's employment was permanent in nature. The challenge made to such award was also rejected by this Court in W.P.No.34593 of 2003 and confirmed in appeal.

15. Likewise, when similarly placed persons as that of the petitioner's father had challenged the termination, the Labour Court had allowed their disputes and awarded reinstatement. The challenge to such an award came to be rejected by this Court in W.P.Nos.25380 & 25381 of 2001 and this Court, in its order dated 20.01.2006, had rendered a finding that the third respondent had not let in any evidence to substantiate that those two workers were engaged on temporary basis and they could never be treated as permanent employees. This portion of the order made in W.A.Nos.305 & 306 of 2007 by placing reliance on the order passed in favour of this two similarly placed workers, the Writ Petition filed by the third respondent against the petitioner's father in W.P.No.34593 of 2003



is also came to be dismissed and it had also reached its finality. When these findings rendered by these Courts to the effect that the petitioner's father is not a temporary employee, there is no justification on the part of the third respondent to reject the petitioner's application on the ground that petitioner's father was only a temporary employee. As such, both the reasonings rendered by the third respondent rejecting the petitioner's application cannot be sustained.

16. It is rather unfortunate to note that the petitioner's father had died in the year 1998 and the award passed in his favour in the year 1996 came to be challenged by the third respondent after about 7 years. Likewise, when the Writ Petition filed by the third respondent against the petitioner's father's reinstatement was dismissed on 29.11.2011, the petitioner's subsequent representation for compassionate appointment made on 25.06.2012 was kept pending for a long time, which prompted the petitioner to file a Writ Petition in W.P.No.28779 of 2014 and pursuant to the orders passed therein, the present impugned order came to be passed.

17. It would be pertinent to point out 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. This proposition was held by 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.'

18. 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**. In the light of these decisions, the laches on the part of the respondents in considering the petitioner's claim, would allure to the petitioner's benefit.

19. In the light of the above findings, the impugned order cannot be sustained. Accordingly, the impugned order passed by the third respondent in his proceedings in Na.Ka.No.C5/10322/2013 dated



23.07.2014 is set aside. Consequently, there shall be a direction to the third respondent herein to issue appointment order to the petitioner herein to such suitable post, atleast within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. No costs.

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Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sm/DP

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.
- 3.The Commissioner,
Tuticorin Corporation,
Tuticorin.

**Pre-Delivery Order made in
W.P.(MD) No.4222 of 2016
29.06.2020**

AP(17/07/2020) 6P 4C