



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.02.2020

PRONOUNCED ON : 28.05.2020

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CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.6493 of 2016

C.Vasuki Bharathi

... Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Assistant Commissioner (Service),
Madurai Corporation,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Mani.13/41381/2015 dated 18.03.2016 on the file of the respondent No.2 and to quash the same as illegal and consequently to direct the respondents to provide employment on compassionate ground to the petitioner within a time stipulated by this Court.

For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.T.S.Mohamed Mohaideen
Standing Counsel

O R D E R

The petitioner's father, who was employed as a scavenger in Madurai Corporation died on 07.09.2005. His wife also died on 03.03.2008. He was survived by four girl children. The petitioner herein, who was the eldest of the daughters was aged about 9 years when the employee died on 07.09.2005. When the petitioner had made request for compassionate appointment, the same was kept pending and by an order passed by this Court in W.P.(MD) No.2170 of 2016 dated 01.02.2016, her representation was directed to be considered within a stipulated time. The impugned order dated 18.03.2016 rejecting the petitioner's request was under challenge in the present Writ petition.



2. The reasons cited by the respondents in rejecting the petitioner's request is that her application for appointment was not made within a period of three years and that the petitioner had married even prior to her application. Admittedly, the petitioner's representation dated 05.12.2015 (08.12.2015 according to the respondents) is not in dispute. As on the date of application, the petitioner was aged about 19 years.

3. One of the two grounds on which the petitioner's application was rejected is that the application was not made within a period of three years from the date of the death of the employee. This reasoning cannot be sustained. 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 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



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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.

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



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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 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."

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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.'

4. 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.

5. In the instant case, the petitioner herein, had attained her majority on 06.06.2014 and she had made her application seeking for compassionate appointment on 05.12.2015/08.12.2015, which is within a period of three years. By applying the ratio laid down in the aforesaid decision, the petitioner would be entitled for appointment on compassionate grounds.

6. The second ground on which the petitioner's application was rejected is that she was married and therefore not entitled for appointment. Though the Government Orders have laid down guidelines for consideration for compassionate appointment, such guidelines came up for consideration before the Hon'ble Division Bench of this Court in a judgment reported in **2006 (2) LW 324 [U.Arulmozhi V. The Director of School Education & Others]**. The scope of considering a married girl for compassionate appointment was dealt with in the following manner:

"8. There is no dispute that the Government has made provision for appointment on compassionate ground, obviously with a view to enable the family members of the deceased employee to tide over immediately the financial

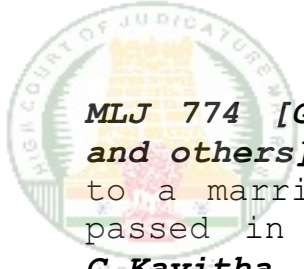


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stringency on account of the death of the breadwinner in the family. It is of course true that as per the G.O.Ms. No. 73, Employment Services dated 26.10.1983, only an unmarried daughter is eligible and not a married daughter. However, there is no requirement in the G.O. that at the time of actual employment such unmarried daughter should continue to be unmarried nor there is any requirement that after an unmarried daughter gets employment on the compassionate ground, she cannot marry in future. There is no dispute that the present petitioner was eligible to make the application and she make an application as an unmarried daughter. The appropriate authority took about 3 to 4 years to finalise the matter. Merely because the unmarried daughter got married in the meantime and that too with a specific understanding that her husband would have no objection to her maintaining the members of the family of her father, it cannot be said that such person had got employment by suppressing any material fact.

9. We have also perused the format in which such applications are required to be made. There is no column in such format to indicate that an applicant at the time of her employment is required to disclose whether she is married in the meantime nor there is any requirement that an unmarried daughter after getting such appointment on compassionate ground is required to remain as a spinster forever. If an unmarried daughter after getting employment on compassionate ground has liberty to marry, we fail to understand as to why an unmarried daughter who makes such application and is otherwise eligible, keeping in view the financial aspect, would be deprived of the right of getting employment, more particularly when there is no objection raised by any other eligible person. As a matter of fact, in the present case, the mother and the petitioner's brother, who has become major in the meantime, have filed affidavits stating that they have no objection to the petitioner continuing in service"

7. The above decision of the Hon'ble Division Bench came to be followed by another learned Single Judge of this Court in **2008 (6)**
<https://hcservices.ecourts.gov.in/hcservices/>



MLJ 774 [G.Girija V. Assistant Director (Panchayats) Kancheepuram and others] and directed the authorities to issue appointment orders to a married legal heir of the deceased. Likewise, in an order passed in **W.P.No.5314 of 2009 dated 31.01.2013**, in the case of **C.Kavitha Vs. The Joint Director of School Education, Employees Division, D.P.I., College Road, Chennai-6 and 2 others**, the learned Single Judge of this Court had directed the authorities to consider compassionate appointment application, without reference to the marriage of the daughter of the deceased. In view of the aforesaid decisions, the marriage of the petitioner herein cannot be an impediment for her to seek compassionate appointment.

8. It would be pertinent to point out here 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.'

9. 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**.

10. In the light of the above observations, the petitioner's application dated 05.12.2015/08.12.2015 is deemed to have been made within time, since the same has been made from which the petitioner had attained her majority. Likewise, the marital status of the petitioner is not an impediment for consideration for appointment in the respondent's Corporation.

11. Accordingly, the impugned order passed by the second respondent in MaNi.13/41381/2015 dated 18.03.2016 is set aside. Consequently, there shall be a direction to the first respondent herein to issue appointment order to the petitioner herein by taking into consideration her other eligibility criteria in a suitable



post/job. Such exercise shall be completed atleast within a period of 12 weeks from the date of receipt of a copy of this order. The Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (crl side)

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/ /2020

Sub Assistant Registrar(CS)

To

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Assistant Commissioner (Service),
Madurai Corporation,
Madurai.

+1 CC to Mr.T.S.MOHAMED MOHIDEEN, Advocate (SR-13002[F] dated
01/06/2020)

order made in

W.P. (MD) No.6493 of 2016

28.05.2020

VB (18.06.2020) 8P 4C