



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 10.02.2020
PRONOUNCED ON : **28.02.2020**

CORAM:

THE HONOURABLE **MR. JUSTICE M. S. RAMESH**

W.P.(MD)No.26588 of 2019

and

W.M.P.(MD) No.22941 of 2019

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D.Chandra

...Petitioner

/vs./

1.The Commissioner of Police,
Madurai City, Madurai - 2.

2.The Director General of Police,
Tamilnadu, Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the compassionate appointment of the petitioner's son namely D.Vignesh Kumar, as Junior Assistant by setting aside the rejection order dated 22-10-2013 and consequently direct the respondents to appoint the petitioner's son, D.Vignesh Kumar as Junior Assistant or any other post on the basis of his qualification in the Police Department within the time frame that may be stipulated by this Hon'ble Court.

For Petitioner : Mr.P.Veerabaku

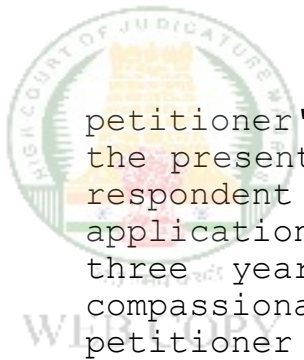
For Respondents : Mr.V.Anand

Government Advocate

ORDER

The grievance of the petitioner is that his/her claim for appointment on compassionate ground has not been considered by the respondents. It is not in dispute that the petitioner and her son are the legal heirs of the deceased employee and as such, are entitled to seek for compassionate appointment, after the death of the said employee.

2. The petitioner's husband, who was employed as Grade I Police Constable died in harness on 28.04.2003. The petitioner's request for compassionate appointment was acknowledged by the first respondent in his letter dated 13.06.2007 and intimated that her name has been kept in the waiting list for appointment on compassionate ground to the post of Office Assistant. Since there was considerable delay in the appointment, the petitioner had filed a writ petition in W.P.(MD)No.5010 of 2013 and this Court, by its order dated 02.04.2013 had directed the respondents to consider the



petitioner's request. Pursuant to the orders passed by this Court, the present impugned order dated 22.10.2013 was passed by the first respondent rejecting the petitioner's claim on the ground that the application filed by the petitioner was not made within a period of three years and that the petitioner's subsequent request for compassionate appointment to her son cannot be considered, since the petitioner was minor at the relevant point of time.

3. It is not in dispute that the petitioner herein had made a request for compassionate appointment for her son, who had attained majority in November 2011 and such a representation was made on 06.03.2013, which is within a period of three years from the date of when the petitioner's son had attained majority.

4. The reasoning of the respondent in rejecting the application cannot be sustained, in view of various judicial pronouncements of this Court, to the effect that an application made by the legal heir of the deceased employee, within three years from the date of attaining majority, is deemed to be made well within time. 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 "Ramados.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



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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.

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



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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 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



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** in the following manner:-

'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.'

8. 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**.

9. In the light of the above observations and findings, the impugned order passed by the first respondent dated 22.10.2013 is set aside. Consequently, there shall be a direction to the concerned respondent to issue an appointment order to the petitioner's son, on compassionate grounds, to such post that may be proportionate to the petitioner's son's qualification. The concerned respondent shall ensure that the appointment order is issued atleast within a period of four (4) weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar (CS)

To

1.The Commissioner of Police,
Madurai City, Madurai - 2.

2.The Director General of Police,
Tamilnadu, Chennai.

+1 CC to M/s.Special Govt.Pleader(SR-9535[F] dated 02/03/2020)

W.P. (MD)No.26588 of 2019

Dated:28.02.2020