



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.02.2020

PRONOUNCED ON : **28 .02.2020**

CORAM:

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

W.P.(MD)No.26115 of 2019

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P.Subbulakshmi

...Petitioner

/vs./

1.The conservator of Forest,
Tirunelveli Zone, NGO Colony,
RTO Office Backside,
Tirunelveli 627 007.

2.The District Forest Officer with
Wild Life Warden,
Tirunelveli Forest Division,
Perumalpuram, Vasantha Nagar,
Tirunelveli District 627 007.

...Respondents

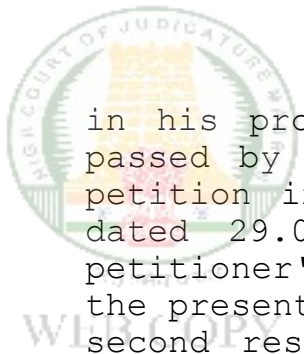
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Impugned Order Se.Mu.Aanai.En.2289/2018/Pa1 dated 31-08-2019 on the file of the 2nd Respondent and quash the same and further directing the Respondents to provide appointment to the petitioner's son in the Forest Department on the compassionate grounds.

For Petitioner	:	Mr.I.Robert Chandrakumar for Mr.G.Prabhu Rajadurai
For Respondents	:	Mr.M.Karuppasamy 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 Forest Guard died on 09.07.1995. The petitioner had made representations on 30.04.1996, 04.04.2003, 31.08.2012. The representations were rejected by the second respondent through his proceedings dated 10.01.2013. The petitioner's further request dated 11.03.2013 for compassionate appointment was acknowledged by the second respondent



in his proceedings dated 12.04.2013. Challenging the two orders passed by the second respondent, the petitioner had filed a writ petition in W.P.(MD)No.9394 of 2014 and this Court, by its order dated 29.08.2018 had directed the respondents to consider the petitioner's request. Pursuant to the orders passed by this Court, the present impugned order dated 31.08.2019 came to be passed by the second respondent rejecting the petitioner's claim on the ground that the petitioner's 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 and such a representation was made on 11.03.2013, which is within a period of three years from the date, 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 "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.

10. There cannot be a controversy in view of the settled position of law that



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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 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



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** 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 in Se.Mu.Aanai.En.2289/2018/Pa1 dated 31-08-2019 on the file of the 2nd Respondent 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

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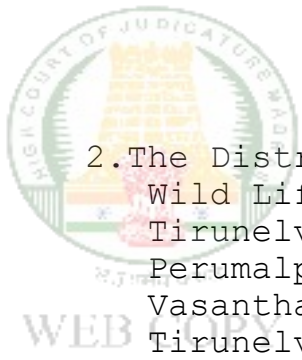
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Sub Assistant Registrar(CS)

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To

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Tirunelveli Zone,
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RTO Office Backside,
Tirunelveli 627 007.



2.The District Forest Officer with
Wild Life Warden,
Tirunelveli Forest Division,
Perumalpuram,
Vasanthanagar,
Tirunelveli District 627 007.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-9482[F] dated
02/03/2020)

+1 CC to SPL.GP (SR-9515[F] dated 02/03/2020)

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VB (17.06.2020) 7P 5C