



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.No.533 of 2021

J.Manimegalai

...Appellant

vs.

1.The Secretary to Government
Municipal Administration and Water supply Department
Fort St. George
Chennai - 600 009

2.The Secretary cum General Manager
Tamil Nadu Water Supply and Drainage Board
No.31, Kamarajar Salai, Chepauk,
Chennai - 600 005.

...Respondents

Prayer: Writ Appeal is filed under clause 15 of the Letter Patent praying to set aside the order of the Learned Single Judge dated 06.11.2020 made in W.P.No.15903 of 2020.

Prayer in W.P.No.15903 of 2020 : Petition filed under Article 226 of the Constitution of India praying for issuance of writ of mandamus directing the 2nd Respondent to provide compassionate appointment to the petitioners younger daughter viz N.Sugantha Priya and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Appellant : Mr. S.P. Sudalaiyandi

For Respondents: Mr.K.V.Sajeev Kumar,
Government Counsel

JUDGMENT

S.VAIDYANATHAN, J.,
AND
A.A.NAKKIRAN, J.,

Instant writ appeal is directed against the order dated 06.11.2020 made in W.P.No.15903 of 2020.



2. The learned counsel appearing for the appellant/writ petitioner submitted that the appellant's husband died on 08.05.2008 and that she made an application for compassionate appointment on 18.12.2008. After receipt of the application, no steps have been taken by the respondents to consider the application for compassionate appointment and that in terms of G.O.Ms.No.135 dated 04.10.2006, the Government has decided to adopt seniority for appointment on compassionate ground, which is contrary to the earlier Government Order, stipulating that the date of the death of the deceased Government servant should be taken into account for the purpose of compassionate appointment. The said G.O. is extracted below.

Abstract

Public Services Scheme of Compassionate ground appointment Fixing of seniority of the legal heirs of the deceased Government Servants orders issued.

-----LABOUR AND EMPLOYMENT (02)
DEPARTMENT

G.O.Ms.No.135

Dated: 14.10.2006
Read:-

From the Deputy Secretary Tamil Nadu
Legislative Assembly Secretariat D.O.Lr.
No.11314/2001 30, TNLA Secretariat (CAC)
dated:07.08.2001 and Assurance No.596/97.

ORDER:

For the appointment under compassionate grounds the question of fixing of seniority for adopting either the date of death of the Government servant (or) the date of application produced by the legal heirs of the deceased Government Servant has to be decided.

2. The Government after careful examination of the matter have decided that the date of death of the deceased Government Servant be taken for fixing seniority for appointment under compassionate grounds and accordingly direct that the date of death of Government servant should be taken for fixing seniority for making appointments under compassionate grounds.

3.This order will take effect from the date of issue of the order.

(BY ORDER OF THE GOVERNOR)

Sd/-

L.K.Tripathy,

Chief Secretary to Government.



/True Copy/

Superintendent.

3. Learned counsel further submitted that though the respondents, vide communication dated 14.07.2017 have called for documents to scrutinize the case of other applicants, the case of the appellant/writ petitioner has not been considered, despite the fact that her husband died as early as on 08.05.2008 while in service. The appellant would have almost reached the age of superannuation, if she had been provided with an employment in the light of the afore-stated Government Order. It was stated that the appellant subsequently made a request on 06.02.2008 to provide employment for her daughter and that no objection certificate has also been given by the appellant/writ petitioner for the daughter being employed on compassionate ground. As the application has not been processed by the Respondents, she was constrained to knock at the doors of the Court in the year 2020, stating that the Respondents have to consider her case for providing employment on compassionate ground to the appellant's second daughter Suganthapriya.

4. The learned Single Judge has dismissed the Writ Petition on the following grounds:

i) There is no averments as to why there was a delay in approaching this Court and that the affidavit is silent as to what happened from 2008 to 2020 and except the death of the husband, nothing has been stated in the affidavit;

ii) Out of two daughters, one daughter was married even prior to the death of the husband of the appellant and the second daughter for whom appointment is sought for has been holding a Degree in Master of Business Administration. Since the second daughter being a well qualified person and capable of earning on her own without any compassionate consideration, the claim for compassionate appointment has no substance;

iii) By passage of time, the request of compassionate appointment could not be considered, which cannot be sought for after a period of 12 years.

5. Aggrieved by the said order, the present appeal has been preferred on the ground that because of G.O.Ms.No.135, the appellant has no other option except to wait for the respondents to take a decision. There is no iota of evidence as to whether this G.O. was presented before the learned Single Judge and the ground is also silent that the learned Single Judge has not considered the said G.O. Even assuming for the sake of argument that the said G.O. has been produced before the learned Single Judge, it is not going to help the appellant as it is for the department to decide as to how to appoint the persons seeking compassionate appointment. It has been decided that based on the



death of a person a seniority would be determined for the purpose of considering the application for compassionate appointment. The writ petitioner/appellant should have knocked at the doors of the Court immediately and not waited for a decade to seek the relief. From the facts, it could be presumed that the appellant/writ petitioner wants to get compassionate appointment to the second daughter who is over qualified, which shows that they were not in indigenious circumstances at the relevant point of time to seek employment

6. Yet another contention was raised by the appellant that the Apex Court in a decision reported in 2006 (9) SCC 195 has considered the case of the petitioner therein for compassionate appointment, as the application was rejected on the ground that the concerned person was 13 years old at the relevant point of time. However, the Supreme Court held that as the application was submitted in time, the case of the petitioner therein should be considered after his attainment of 18 years.

7. The aforesaid judgment reported in 2006 (9) SCC 195 may not be applicable to the facts of the case and it can even be distinguishable on the ground that application therein was made, when the person was minor in the year 1995 the same was rejected in the year 2001, citing the above reason and that the rejection should have taken place or a decision should have been taken, after the minor attained the age of majority. However, in the present case on hand, the appellant has made an application immediately after the death of her husband and when there was no action thereon, she should have knocked at the doors of the Court immediately seeking employment for herself and not after a decade, allowing her daughter to acquire Master degree and thereafter seek for compassionate appointment to her daughter and that there is no such application for the minor daughter at that relevant point of time. Even if it has been made, that would have not been entertained, as minor cannot seek employment in any place.

8. Yet another decision was quoted by the appellant/writ petitioner reported in AIR 2015 SCW 3212 in Canara Bank and another Vs M.Mahesh Kumar and by referring to Paragraph No.15, it is vehemently contended that when a person is a minor, a post must have been kept for the purpose of considering the case of the family member on compassionate ground more so in the light of the G.O.Ms.No.135. As stated supra G.O.Ms.No.135 is for a different purpose. Secondly the decision reported in Canara Bank case (supra) may not be applicable to the case and the relevant paragraph No. 15 is extracted below.

"15. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits,



WEB COPY

in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority."

9. In that case, the Bank had a clause in the scheme that if the dependent of the deceased employee, who has to be offered appointment, happens to be a minor, the Bank may keep the offer of appointment open till the minor attains majority. Such a clause is absent in the Government Sector and the Courts have held that the employer need not keep a post vacant and wait whether the family member/minor is going to apply for appointment after the minor child attains majority. Hence, on this ground we find that there is no merit in the appeal and the order of the learned Single Judge is sustained.

10. In the result, the Writ Appeal is dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

dpq

To:

1. The Secretary to Government
Municipal Administration and Water supply Department
Fort St. George
Chennai - 600 009

2. The Secretary cum General Manager
Tamil Nadu Water Supply and Drainage Board
No.31, Kamarajar Salai, Chepauk,
Chennai - 600 005.

+1cc to Government Pleader SR.No.51988

W.A.No.533 of 2021

UM(CO)
GMY(03/02/2022)