



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No. 11397 of 2016

D. Ashok Kumar

... Petitioner

Vs.

1. The District Collector,
Krishnagiri District,
Krishnagiri.

2. The Revenue Divisional Officer,
Krishnagiri.

3. The Tahsildar,
Taluk Office,
Krishnagiri Taluk,
Krishnagiri.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings dated 05.05.2015 passed in Na.Ka.4307/1996/A2 on the file of the third respondent herein, quash the same and consequently direct the respondents herein to consider the appointment of the petitioner under compassionate grounds with all attendant benefits within stipulated period.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr. K.Tippu Sulthan
Government Advocate.

O R D E R

With the consent of both parties, the Writ Petition is taken up and heard through Video Conferencing today.

2. The present Writ Petition is filed challenging the impugned proceedings of the third respondent herein in Na.Ka.4307/1996/A2 dated 05.05.2015 and to quash the same. Further, seeking direction to the respondents herein to consider the appointment of the petitioner under compassionate grounds with all attendant benefits within stipulated time as fixed by this Court.



3. One Mr.K.Devaraj, while working as a Village Assistant in Guadalapatti Village, Krishnagiri Taluk died on 01.04.1996. The petitioner is his son.

4. The mother of the petitioner viz., Palaniamal had made an application on 03.03.1997 seeking for compassionate appointment. At that point of time, the petitioner herein was a minor, aged about 5 years. The petitioner thereafter became a major on 02.10.2009. Since no orders were passed in her application, the petitioner herein gave a representation on 16.04.2012, seeking for compassionate appointment. The original application of the petitioner was rejected through the impugned order dated 05.05.2015 stating that he had made an application after 16 years from the date of death of his father.

5. It is not in dispute that the wife of the late employee had made an application within a period of three years from the date of death of her husband. In fact, the application of the mother of the petitioner dated 03.03.1997 was also acknowledged by the Tahsildar of Krishnagiri through his proceedings dated 05.08.1997 and her application was not considered at that point of time, stating that though the post of Village Assistant have been regularized as full time Government Servants with effect from 01.06.1995, the orders for appointment on compassionate ground for the legal heirs of such Village Assistant are awaited from the Government.

6. Through the present impugned order, the third respondent herein had taken into consideration the original application dated 03.03.1997 made by the petitioner's mother namely, Mrs.Palaniammal alone and had called her for further scrutiny. The subsequent application made by the petitioner on 16.04.2012, as apparently been ignored on the ground that it was not made within a period of three years from the date of death of the employee.

7. The impugned order, taking into consideration of the petitioner's mother's application dated 03.03.1997, after a lapse of 18 years, for extending compassionate appointment to her, is totally unjustifiable. As per the records produced before this Court, the petitioner's mother was 28 years old when she had made her original application on 03.03.1997 and when the third respondent had called for further scrutiny of her application, she was aged about 46 years. It is owing to the inaction on the part of the respondents to act upon the petitioner's mother's original application, she had given another application on 16.04.2012 itself, seeking for compassionate appointment to her son, who was 20 years at that point of time. The reason assigned by the third respondent in his earlier proceedings dated 05.08.1997, that the Government



orders are awaited with regard to extending compassionate appointment to the legal heirs of the Village Assistant, also cannot be sustained since the Village Assistants were already recognized as Government Servants at that relevant point of time and that the benefit of compassionate appointment would be applicable to them also. In spite of the same, the third respondent had not taken any further steps to act upon the original application of the petitioner's mother dated 03.03.1997. Thus, there is absolutely no justification on the part of the third respondent in keeping the petitioner's mother's application dormant and now act upon it when the mother has crossed 46 years of age.

8. The only reason indicated in the impugned order for not considering the petitioner's application is that, the petitioner had not made an application within three years from the date of death of his father. Though it is true that the petitioner's mother has made an application within the aforesaid three years period, the petitioner could not have made at that point of time since he was a minor. However, his subsequent application dated 16.04.2012 was made within a period of three years from the date on which he became a major i.e., from 02.10.2009.

9. The issue as to whether a minor can make an application within three years from the date on which he attains majority, in cases where the minor's mother had made an application within three years from the date of death of the employee, had come up for consideration on various occasions before this Court and in one such Writ Petition, this Court had relied upon the earlier decision of this Court and had upheld that such an application made by the legal heirs within three years after attaining majority, is maintainable. The relevant portion of the order passed in W.P.(MD)No.12593 of 2016 dated 29.06.2020 reads as follows:-

"4. This court in various decisions has held that a minor legal heir is entitled to make request for compassionate appointment within 3 years from the date he attains majority. 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



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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 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



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(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 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



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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."

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.'

5. 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 he had attained his majority.

6. In the instant case, the petitioner had become major on 10.02.2014. In view of the aforesaid findings he would be entitled to seek compassionate appointment till 10.02.2017. However, his application was already pending before the first respondent and the impugned order of rejection came to be passed in the year 2016, which is before the expiry of three years from the date on which the petitioner had attained majority.

7. Apart from the above observations, the Hon'ble Division Bench of this Court had earlier in an order passed in W.A.(MD)No.1400 of 2011 dated 16.12.2015 in the case of S.Velraj Vs. The Superintendent Engineer, TNEB, Tirunelveli and another, had held that three years limitations



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prescribed for making an application for compassionate appointment cannot be applied in a strait jacket formula and each and every case has to be approached differently, based on the facts. The Scheme for appointment on compassionate ground to the children of the deceased employee is a welfare scheme, to tide over the financial constraints of the bereaved family due to the sudden demise of the breadwinner of the family. As such, the mother's application on behalf of the petitioner, was deemed to be pending for at least 3 years from the day on which the petitioner became a major and the pre-matured rejection order stating that the petitioner had not completed 18 years at the time of his application, cannot be sustained.

8. In view of all these reasons, the rejection itself is not proper and consequently, the petitioner would be entitled for appointment on compassionate grounds."

10. The aforesaid order is self-explanatory. As such, when it is not in dispute that the widow of a late employee had made an application within three years from the date of the death of the employee and thereafter, the son of the late employee had made an application seeking for compassionate appointment, within three years from the date on which he became a major, such an application is maintainable and consequently, her son would be entitled for consideration for compassionate appointment. As a result, the reasons assigned in the present impugned order cannot be sustained.

11. In the light of the above observations, the impugned order passed by the third respondent herein in Na.Ka.No.4307/1996/A2 dated 05.05.2015, is hereby quashed. Consequently, the first respondent herein is called upon to reconsider the petitioner's application dated 16.04.2012 for compassionate appointment and pass necessary orders for grant of appointment on compassionate grounds, without quoting the three years period from the date of death of the employee, as a bar. Such an exercise shall be completed, at least within a period of three months from the date of receipt of a copy of this order.

12. With the above directions, the Writ Petition stands allowed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



gv/DP

To

1. The District Collector,
Krishnagiri District,
Krishnagiri.
2. The Revenue Divisional Officer,
Krishnagiri.
3. The Tahsildar,
Taluk Office,
Krishnagiri Taluk,
Krishnagiri.

+1cc to M/s.K.Govi Ganesan, Advocate Sr No.34462
+1cc to Government Pleader Sr No.34938

W.P.No.11397 of 2016

PMK (CO)
PR (15/09/2021)