



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.19880 of 2013

S.Santhi

... Petitioner

Vs

1.State of Tamil Nadu rep by its,
Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai - 600 008.

3.The Joint Commissioner of Police (Traffic South),
Chennai - 600 010. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the concerned records relating to the Memo No. Na.Ka. No. Pa. P2/Po.Va/ 823/ 26570/2011 dated 10.01.2012 passed by the 3rd respondent and quash the same and consequently direct the 2nd respondent to appoint the petitioner's son Mr.S.Saravanaperumal on compassionate ground in any suitable post to which he is eligible and grant all monetary and consequential benefits award costs.

For Petitioner : Mr.M.Gnanasekar

For R1 to R3 : Mr.P.Chinnadurai, AGP

ORDER

The relief sought for in this writ petition is to issue a writ of certiorarified mandamus calling for the records relating to the Memo No. Na.Ka. No. Pa. P2/Po.Va/ 823/ 26570/2011 dated 10.01.2012 passed by the 3rd respondent and quash the same and consequently direct the 2nd respondent to appoint the petitioner's son S.Saravanaperumal on compassionate ground in



2. According to the petitioner, her husband Srinivasan, while working as a Traffic Head Constable, died on 04.12.2008 in the road accident. Seeking compassionate appointment to her son, the petitioner made a representation on 28.12.2011. However, by proceedings dated 10.01.2012, the 3rd respondent rejected the representation of the petitioner on the ground that the application was not made within a period of three years from the date of death of the government servant. Assailing the same, the petitioner has come up with this writ petition for the aforesaid relief.

4. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that as per the Government Order, the application seeking compassionate appointment should be made within a period of three years from the date of death of the government servant, whereas the petitioner made such application beyond the period of limitation and hence, the third respondent rejected the same by the order impugned herein, which is perfectly valid in law and the same warrants no interference by this Court.

6. It is not in dispute that the petitioner's husband died on 04.12.2008, while he was in service; and the petitioner made application seeking compassionate ground appointment on 28.12.2011, beyond the period of limitation and hence, the same



was rejected by the third respondent by the order impugned herein.

7. Be it noted, the compassionate appointment is an exception to a regular appointment as it is being made under exceptional circumstances, unwanted and unpredicted by any beneficiary. It is not only just and reasonable, but also noble as its object is to save a family of an employee who was in employment, from the sudden financial crisis. Hence, the compassionate appointment which is intended to provide livelihood to the family of the deceased employee, with human dignity, cannot be treated as a casual concession, but an exceptional concession and should be constitutionally protected. That is the reason, the Supreme Court in *Bhavani Prasad Sanhar v. Union of India* [(2011) 4 SCC 209], in paragraph 15, it was observed as follows:

?...Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general Rules, carved out in the interest of justice, in certain emergencies, by way of a policy of an employer which partakes the character of the service Rules...?

8. In another decision in *National Hydroelectric Power Corporation v. Nanak Chand* [(2004) 12 SCC 487], it was held by the Supreme Court that 'the appointment is meant to mitigate financial hardship caused due to the death of the bread earner of the family and hence, it should not be delayed. Direction was issued in that case to consider the case of the candidate sympathetically.'?

9. It is also noteworthy to mention the observation of the Full Bench of this Court in paragraph 13 of its order dated 11.03.2020 rendered in WP(MD)No.7016 of 2011, which was passed with respect to the compassionate ground appointment and the same reads as follows:

"13...In view of what has been indicated above, we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

10. Applying the aforesaid legal proposition to the facts of the present case, wherein, the petitioner made application seeking compassionate appointment to her son, only with a delay of 24 days, this Court is of the opinion that the order rejecting the claim of the petitioner seeking compassionate ground appointment to her son, on the ground that the same was



made within a period of three years from the date of death of her husband, requires reconsideration by the respondent authorities, on humanitarian grounds.

11. In such view of the matter, the order dated 10.01.2012 passed by the third respondent is set aside and the matter is remanded back to the respondent authorities for passing fresh orders, on the claim of the petitioner, as per law. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

12. This writ petition stands disposed of, in the above terms. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Secretary to Government,
Home Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai, Egmore, Chennai - 600 008.
3. The Joint Commissioner of Police (Traffic South),
Chennai - 600 010.

+1cc to M/s.M.Gnanasekar, Advocate Sr.20629
+1cc to the Government Pleader Sr.20537

W.P.No.19880 of 2013

ak[col]
srg 20/07/2021