

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4122 of 2021
and W.M.P.No.4697 of 2021

(Heard through VC)

K.Manikandan

... Petitioner

-vs-

1.The District Collector,
Office of the District Collector,
Cuddalore - 606 304.

2.The Tahsildar,
Taluk Office, Veppur,
Cuddalore - 606 304.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the entire records of the 1st respondent rejection order dated 03.05.2018 and to quash the same as being illegal in law and for a consequential direction to the respondents to consider the petitioner's application under compassionate appointment.

For Petitioner : Mr.R.Ramachandran

For Respondents : Mr.J.Pothiraj
Special Government Pleader

ORDER

The petitioner has come forward with the present writ petition challenging the rejection order passed by the first respondent dated 03.05.2018 and for a consequential direction to the respondents to consider his application under compassionate appointment.

2. Mr.J.Pothiraj, learned Special Government Pleader takes notice on behalf of the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. According to the Petitioner, his father died on 29.01.2003, while in service, due to ill health and at the time of his father's death, he was aged 15 years. Since his mother being an uneducated single parent, he was forced to work as a daily wager and thereafter, he completed his B.E.

degree in the year 2010. It is stated by the petitioner that in the year 2018, through news article, he came to know about the scheme of compassionate ground employment. On knowing the same, the petitioner has sent a letter dated 29.01.2019 to the first respondent requesting him to recommend for a government job under compassionate ground, but there is no reply from the first respondent. Thereafter, on 20.02.2018, he sent a letter to the second respondent requesting for combined certificate and on 27.03.2018, the second respondent had issued the combined certificate. Thereafter, the petitioner has made an application to the first respondent on 23.04.2018 through the second respondent for appointment on compassionate ground. The second respondent has sent a reply stating that the first respondent vide order dated 03.05.2018 has rejected the application of the petitioner on the ground that the application was not filed within the time period of 3 years from the date of death of his father. Aggrieved by the said order, the petitioner is before this Court.

4. The learned Special Government Pleader has contended that the issue with regard to compassionate appointment is well settled now and the Hon'ble Full Bench of this Court in the case of K.Shanmugam Vs. Tamil Nadu State Transport Corporation, rep. by its Managing Director, Villupuram [W.P. (MD) Nos.7016 of 2011 etc. batch] decided on 11.03.2020, elaborately discussed the core issue arising out of compassionate appointment and held that the application for appointment on compassionate grounds should be made within three years of the death of Government servant and not from the date of attainment of majority. For the sake of convenience, the relevant paragraphs of the judgment are extracted hereunder:

"3. The State of Tamil Nadu, has passed different Government orders for framing schemes for providing appointment on compassionate basis.

4. The first of such schemes framed by the Government is dated 15.02.1972, passed in G.O.Ms.No.225, (Labour). The relevant portion of the said G.O which brings out the scheme reads as under:-

"The proposals mentioned in para 1 and 2 above have been examined by Government in detail. The Government direct that the general procedure of recruitment through the Employment Exchanges to all the posts which fall outside the purview of the Tamil Nadu Public Service Commission be relaxed in favour of the Son/Daughter/Near relative who would take care of the family of a Government Servant who dies ill harrass leaving his family in indigent

circumstances, subject to the following conditions:-

- a) The candidates should possess all the prescribed qualification for the posts concerned.
- b) The power to waive the normal procedure of recruitment through the Employment Exchange will be vested with Secretaries to Government of the departments concerned.
- c) The concurrence of the Labour Departments should be obtained before making such appointments."

13. In the light of the above we find that the judgment in the case of A. Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E. Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. 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."

5. I have also considered various judgments of the Apex Court and rendered a finding with regard to compassionate appointment in the case of S.Gowtham Balu The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai - 600 002 and another [W.P.(MD)Nos.4129, 7045, 16624 and 20786 of 2014] decided on 24.09.2018.

6. The Apex Court in the case of Bhawani Prasad Sonkar vs. Union of India reported in 2011 (4) SCC 209, held as under:

"20. Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules of regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de-hors the scheme.

must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread-winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

7. In terms of the judgment of the Division Bench (supra) application to be submitted within three years from the date of death of the deceased employee and not from the date of attaining majority. In the present case on hand, admittedly, the petitioner has applied for compassionate appointment only on 23.04.2018, which is not within the time, namely, within three years from the date of death of the deceased employee. So applying the ration laid down by the Hon'ble Full Bench of this Court, in the considered opinion of this Court, the claim of the petitioner, that too after a lapse of nearly 18 years, has no substance and the Writ Petition is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

rsi

To

1. The District Collector,
Office of the District Collector,
Cuddalore - 606 304.

2. The Tahsildar,
Taluk Office, Veppur, Cuddalore - 606 304.

+1cc to Mr. T. Suriya, Advocate SR.No.12703

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and W.M.P.No.4697 of 2021

RR (CO)

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