

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.03.2021

Delivered On : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.22693 of 2015

C.Kavitha

... Petitioner

..vs..

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of Town Panchayats,
Kuralagam,
Chennai - 600 108.
3. The Assistant Director (Town Panchayats)
Office of the Assistant Director Town Panchayats,
Salem Zone, Salem - 1.
4. The District Collector
Collectorate Office, Namakkal,
Namakkal District.
5. The Executive Officer
Paramathi Town Panchayat,
Namakkal District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the Third Respondent in proceedings Oo.Mu.No.2376/2012/B dated 26.05.2014 and quash the same and consequently direct the Respondents herein to consider the appointment of the Petitioner on Compassionate Grounds with all attendant benefits.

For Petitioner : M/s N.Nithianandam

For R1 to R4 : Mr.S.Thangavel Spl. GP

For R5 : Mr.A.Mayilraj

ORDER

Calling in question the order dated 26.05.2014 passed by the third respondent, the petitioner has come up with this writ petition. A consequential direction has also been sought to the respondents to consider the appointment of the petitioner on compassionate grounds with all attendant benefits.

2.The case in brief is as follows:

The petitioner's father V.Chandiran died on 22.05.1999, while he was working as an Executive Officer in the 5th Respondent Town Panchayat. After his demise, since his wife C.Amaravathy / mother of the petitioner did not possess the required educational qualification, she made an application dated 19.07.1999 to the 5th Respondent, seeking employment on compassionate grounds for the petitioner, to which, she received a reply by Proceedings No.157/99 dated 28.10.1999, to the effect that the petitioner was 7 years old and was a minor and hence, she was directed to apply for compassionate appointment after he attains majority, with relevant documents. Accordingly, on reaching the age of majority, the petitioner made an application on 03.09.2012 to the 4th Respondent through 5th Respondent, a copy of which was addressed to other respondents in the writ petition. However, the 3rd Respondent by proceedings in Na.Ka.No.276/2012/B dated 06.09.2012, returned the said application to the petitioner with a direction to resubmit the same with relevant documents through proper channel. Pursuant to the same, the petitioner resubmitted the application with the required documents. But, the said application was rejected by the third respondent, by the impugned proceedings in Oo.Mu.No.2376/2012/B dated 26.05.2014 on the ground that she applied for compassionate employment after a lapse of 13 years from the date of death of her father. Feeling aggrieved, the petitioner is before this Court with the present Writ Petition.

3.The learned counsel for the petitioner submitted that immediately after the death of the deceased Government servant, the petitioner's mother submitted the representation on 19.07.1999, for compassionate appointment to the petitioner, to the fifth respondent, who in turn, directed her to apply for the same, after attaining majority by the petitioner as she was 7 years old and therefore, the petitioner was under the bonafide impression that her application was kept pending till she attains majority. Whereas the subsequent representation submitted by the petitioner on reaching the age of majority, was rejected on the ground that it was time barred, as she made the same after 13 years from the date of death of her father, by the proceedings of the third respondent dated 26.05.2015, which is arbitrary, illegal and unsustainable in law and hence, the

same is liable to be set aside. According to the learned counsel, the respondents should have appreciated the object of the Scheme that is to provide employment to the dependants on the death of the bread winner and provided any suitable job to the petitioner. Stating so, the learned counsel prayed for appropriate direction to the respondents to reconsider the issue involved herein.

4. On the other hand, the learned standing counsel appearing for the respondents submitted that at the time of submitting the original application, the petitioner was 7 years old and was a minor and hence, the respondent authorities directed her mother to submit the application after attaining majority by the petitioner in terms of the existing Government Order. However, the subsequent application made by the petitioner, on attaining the age of majority, was rejected citing the limitation ground, based on G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, which stipulates that the application for compassionate appointments should be made within 3 years from the date of death of the Government servant. Therefore, the order impugned herein is perfectly valid in law and the same need not be interfered with by this Court.

5. Heard both sides and perused the records available on record.

6. It is an admitted fact that the petitioner's father died on 22.05.1999, while he was in service. Though the mother of the petitioner made an application seeking compassionate appointment to her daughter / petitioner, the same was not considered on the ground that at that time, the petitioner was a minor and she was directed to make the application after attaining majority. On reaching the age of majority, the petitioner made another application for compassionate ground appointment, which was rejected by the third respondent on the ground that the same was made after a lapse of 13 years from the date of death of her father.

7. Though the learned counsel for the petitioner submitted that the order passed by the third respondent rejecting the claim of the petitioner seeking compassionate appointment as time barred, is merely on technical ground and hence, the same is liable to be set aside, this Court is not inclined to accept the same, as the order impugned herein would clearly state that as per G.O.Ms.No.120 Labour and Employment Department, Dated 26.06.1995, the application seeking compassionate appointment should be made within three years from the date of death of the deceased Government servant, whereas the petitioner made such application, after a lapse of 13 years and hence, her application was rightly, rejected as time barred. Further, the recent G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020 which superseded all the Government Orders earlier issued from the year 1972,

prescribed the time limit for making the application for compassionate appointment as three years from the date of death of the Government servant.

8. Undoubtedly, 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. However, the same cannot be claimed as a matter of right and it should be exercised within the rules framed under the Scheme. At this juncture, it is apt to quote the observation of the Supreme Court in *State of Haryana v. Rani Devi* [1996 (5) SCC 308] that 'the appointment on compassionate grounds cannot be made after the lapse of a period specified in the rules as it is not a vested right to exercise at any time in future'. That apart, in *Chief Commissioner, Central Excise and Customs and others v. Prabhat Singh* [(2012) 13 SCC 412], it was held by the Supreme Court that "the Court should not fall prey to any sympathy syndrome of issue direction for compassionate appointment dehors prescribed norms".

9. It is also apropos to point out that the issue involved herein came up for consideration in WP.(MD)No.7016 of 2011 by way of reference to the Full Bench of this Court, which answered the same by order dated 11.03.2020, paragraph 32(a) of which is profitably extracted hereunder:

"Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the Scheme that has been framed by the employer. Any deviation from the Scheme is not permissible."

10. Paragraph 31 of the aforesaid Full Bench decision is with respect to belated submission of application, which reads as follows:

"The Hon'ble Supreme Court in *Sanjay Kumar v. State of Bihar*, (2000) 7 SCC 192, has held that when the very purpose of compassionate appointment is to see that the family gets immediate relief, then the application by the dependent of the deceased employee filed after he attains majority cannot be entertained. Considering a belated application will be contrary to the Scheme framed by the Government and will be also contrary to the judgments of the Supreme Court."

11. Therefore, this Court cannot take a different stand contrary to the recent G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020 as well the decision of the

Full Bench of this Court in WP.(MD).N0.7016 of 2011 dated 11.03.2020.

12.In such view of the matter, the order impugned herein does not require any interference at the hands of this Court and the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

rk

To

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of Town Panchayats,
Kuralagam, Chennai - 600 108.
3. The Assistant Director (Town Panchayats)
Office of the Assistant Director Town Panchayats,
Salem Zone, Salem - 1.
4. The District Collector
Collectorate Office, Namakkal,
Namakkal District.
5. The Executive Officer
Paramathi Town Panchayat,
Namakkal District.

+1cc to the Government Pleader, SR.No.25686

+1cc to M/s N.Nithianandam, Advocate, SR.No.25593

W.P.No.22693 of 2015

UM (CO)

RLP (13.07.2021)