

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.23698 of 2015
and
M.P.No.1 of 2015

R.Senthil Raja ... Petitioner

..vs..

1. Government of Tamil Nadu,
Represented by Secretary to Government,
Highway Department,
Secretariat, Chennai - 600 009.
2. The Chief Engineer (General),
Highway and Rural Works Dept,
Chepauk, Chennai 600 005.
3. The Divisional Engineer
Highway Dept,
Namakkal. ... 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 Orders in (1) Memo No.N1 7(1)/8391/2001-1 dated 21.08.2001 of the Second Respondent and (2) Memo Na.Ka.No.5805/2000/B1 dated 18.02.2008 third respondent to quash same and to issue consequential direction to the respondents to give appointment to the Petitioner on Compassionate grounds consequent on the death of his father C.Ramamoorthy on 11.12.1988 while working as Office Assistant in Namakkal Highway Division.

For Petitioner : M/s.M.Ravi

For R1 to R3 : Mr.S.Thangavel, Spl.GP

ORDER

The facts as averred in the writ petition are as follows:

(i) While the Petitioner's father C.Ramamoorthy was working as Office Assistant in Namakkal Sub Division of National Rural Employment Scheme, Namakkal Highway Division, he expired on 11.12.1988, leaving behind him (1) Sarasu (Wife) (2) Kavitha (minor daughter) (3) Bhoopathi (minor son) and (4) Senthil Raja (minor son, Petitioner) as his legal heirs. The petitioner's mother is illiterate and hence, she did not apply for compassionate appointment. In the mean while, the petitioner's elder sister got married and his elder brother Bhoopathy fell sick and died on 08.01.2000.

(ii) On attaining the age of majority, the petitioner made application for compassionate appointment on 20.09.2000. However, the Second Respondent, by Memo dated 21.08.2001, informed that the application was submitted after 12 years from the death of his father and hence, the same was rejected as time barred.

(iii) Subsequently, the petitioner submitted a representation dated 15.09.2001 pointing out that the 3 years limitation period prescribed in G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, would apply only to those cases, wherein, the employees died after 26.06.1995, as per the clarification issued in Govt. Letter No.39924/Q1/95-1, Labour and Employment Department, dated 11.10.1995 and requesting to reconsider his claim for compassionate ground appointment, since his father died on 11.12.1988 and there was ban on compassionate grounds appointment from December 2001 to February 2006. But the said representation was also rejected as time barred, by the Divisional Engineer (Highways), Namakkal vide communication dated 18.02.2008, informing that as per the clarification stated in the Government Letter No.202 Labour and Employment Department, dated 08.10.2007, the limitation period of 3 years would apply to all the cases of the Government employees, whose death occurred prior to 26.06.1995 as well. Feeling aggrieved, the petitioner has come up with this writ petition to quash the two orders / Memos so passed by the respondents 2 and 3 and consequently, direct the respondents to provide him appointment on compassionate grounds.

2. Upon notice, the third respondent filed a detailed counter affidavit, wherein, it is inter alia, stated that the petitioner has given an application for compassionate ground appointment after twelve years, on attaining the age of majority on 20.09.2000, which was made after the period of limitation of three years and hence, it was rejected by the Chief Engineer, in his Memo dated 21.08.2001. It is also stated that the said order

was challenged in this writ petition, after a lapse of fourteen years and therefore, the writ petition is liable to be dismissed. The counter affidavit further proceeds to state that as per G.O.Ms.No.120, dated 26.06.1995 and the clarification issued by the Government by letter dated 11.10.1995, the petitioner is entitled to apply for compassionate ground appointment within a period of limitation of three years from the date of death of his father, but he applied for the same after a lapse of 12 years and hence, the orders of rejection passed by the respondents 2 and 3 are valid.

3.The learned counsel for the petitioner submitted that the second and third respondents erred in rejecting the petitioner's legitimate claim of compassionate appointment on untenable grounds without proper application of mind to G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995 and the clarification issued by the Government in Letter No.39924/Q1/95-1 dated 11.10.1995, wherein, it was specifically stated that the limitation of 3 years would apply to the cases of death of the Government employees occurred after 26.06.1995. The learned counsel further submitted that since the petitioner's father died on 11.12.1988 i.e., before the cut off date of 26.06.1995, the petitioner is entitled to compassionate ground appointment, applying the aforesaid G.O and the clarification issued by the Government. Thus, the learned counsel sought to allow this writ petition by quashing the orders impugned herein.

4.Per contra, the learned Special Government Pleader appearing for the respondents reiterated the averments made in the counter affidavit filed by the third respondent. According to him, the application filed by the petitioner seeking appointment on compassionate grounds, was time barred and hence, the orders impugned herein are perfectly valid in law and the same do not require any interference at the hands of this Court.

5.Heard both sides and perused the records.

6.The facts remain undisputed are that the petitioner's father died on 11.12.1988, while he was in service and at that time, the petitioner was 7 years old; and on attaining the age of majority, he made application seeking job on compassionate grounds, after a lapse of 12 years i.e., beyond the limitation period of three years.

7.It is the specific case of the petitioner that by virtue of G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995 and the subsequent clarification issued by the Government in Letter No.39924/Q1/95-1 dated 11.10.1995, the limitation of 3 years would apply only to the cases of death of the Government employees occurred after 26.06.1995, whereas the

petitioner's father died on 11.12.1988, which is before the cut off date and hence, the petitioner is eligible to apply compassionate ground appointment.

8.The aforesaid stand taken by the petitioner was seriously resisted by the respondents stating that as per the Government Letter No.202 dated 08.10.2007, the limitation of three years is applicable to all the cases, including where the death of the Government servant even prior to 26.06.1995 also and hence, the application made by the petitioner seeking compassionate ground appointment, was rightly rejected by the respondents 2 and 3, by the orders impugned herein.

9.On a reading of G.O.Ms.No.120 dated 26.06.1995, it is manifest that the said order was relating to raising the maximum age to 50 years in the case of widows of the deceased Government servant for making application seeking compassionate ground appointments within 3 years of the death of Government servant. For better appreciation, the relevant passage of the said G.O. is extracted hereunder:

"2.Simultaneously, the Government also reviewed the existing orders under the scheme. After careful review, the Government issue the following modifications to the scheme.

1.The applications for appointment on compassionate grounds should be made within three years of the death of Government servants;

2.The maximum age limit for such appointment be raised to 50 in the case of widows of the deceased Government servants."

10.It is seen from the subsequent letter issued by the Secretary to Government, Labour and Employment Department, Chennai, bearing No.39924/Q1/96-1 dated 11.10.1995 that the same clarified the aforesaid Government Order to the effect that 'the limitation period of three years would be applicable only in the case of death of the Government servant occurred after 26.06.1995 and the same would not be applicable to the death of the Government servant happened before 26.06.1995. It was further stated therein that the said clarification would also be applicable, relating to raising the maximum age to 50 years in the case of widows of the deceased Government servant. As per the said letter, the petitioner claimed compassionate appointment. However, the third respondent in paragraph 5 of his counter affidavit, categorically averred as under:

"5.As regards the averment made in Para 7 & 8 of the affidavit, it is submitted that the Government in Letter No.4910/U1/1995-3, Labour and Employment dated 28.02.1995, instructions were issued to all heads of

departments to kept in abeyance all appointments and matter relating to compassionate ground appointment. Therefore, no action could be taken in 1995. The Government in Letter No.202 dated 08.10.2007, has issued instruction regarding time limit, which reads as follows:

5.I am, therefore, to request you to follow the above guidelines issued in the Government Order fifth cited for all present, past and future cases and the instructions issued in Government Letter second cited cannot be taken into account. The crux of the matter is that the time limit shall be 3 years for filing of application from the date of the death of Government servant and is applicable to all cases, including where the Government servant has died in service even prior to 26.06.1995 also".

Thus, it is crystal clear that the three years limitation period would be applicable to all the cases, including where the death of the Government servant happened prior to 26.06.1995 as well.

11.Even in the recent G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, which superseded all the earlier G.Os. issued from 1972, it is specifically stated that the three years is the limitation period for making compassionate ground appointments. As such, the application made by the petitioner seeking compassionate ground appointment after a lapse of 12 years, was absolutely time barred and the rejection of the same by the respondents 2 and 3 through the Memos/orders impugned herein, is definitely right and hence, the same do not call for any interference, in the opinion of this Court.

12.Be it noted, the Supreme Court in State of Haryana v. Rani Devi [1996 (5) SCC 308], was of the view that the appointment on compassionate grounds cannot be made after a lapse of the 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".

13.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."

14.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."

15.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.

16.In such view of the matter, this writ petition is liable to be dismissed and is accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Highway Department,
Secretariat, Chennai - 600 009.

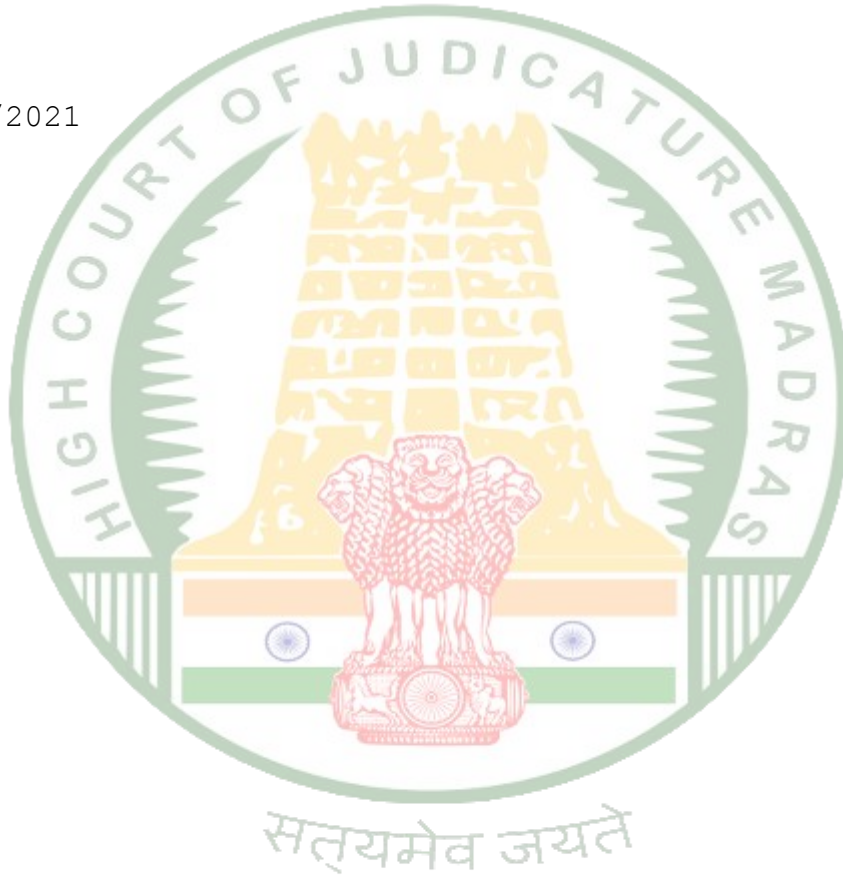
2. The Chief Engineer (General),
Highway and Rural Works Dept,
Chepauk, Chennai 600 005.

3. The Divisional Engineer
Highway Department,
Namakkal.

+1cc to the Government pleader Sr.25693

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