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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.23685 of 2016

M.Nivetha

... Petitioner

..vs..

1. The Inspector General of Police,
Tamil Nadu,
Chennai - 4.

2. The Commissioner of Police,
Salem City,
Salem 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 pertaining to the order passed by the Second Respondent in Na.Ka.No.A3/142/12893/2015 dated 12.05.2015 and quash the same, consequently issue direction directing the Second Respondent to consider the Petitioner representation dated 04.05.2015 and provide employment in Compassionate ground.

For Petitioner : M/s R.Marudhachalamurthy

For R1 & R2 : Mr.S.Thangavel Spl.G.P

ORDER

The prayer made in this writ petition is to issue a Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in Na.Ka.No.A3/142/12893/2015 dated 12.05.2015 and to quash the same and consequently direct the second respondent to consider the Petitioner's representation dated 04.05.2015 and provide employment in Compassionate ground.

2.It is the case of the petitioner that her father by name R.Munian, while working as Constable (C.No.1423), died on 17.01.2003. At that time, the petitioner was 7 years old. Subsequently, her mother also expired on 14.04.2003. After completion of X standard, the petitioner approached the second



respondent and made a representation dated 21.05.2003 seeking employment on compassionate appointment, which was rejected by proceedings dated 30.07.2013 stating that she was not completed the age of 18 years and the application was made after a lapse of 10 years from the date of death of her father. On completion of +2 course and reaching the age of majority, she again made application dated 04.05.2015, seeking compassionate appointment, which was also rejected by the second respondent by proceedings dated 12.05.2015 on the ground of limitation, which is impugned herein.

3.The learned counsel for the petitioner submitted that at the time of death of her father, the petitioner was only 7 years old and hence, she made application seeking compassionate appointment, on reaching the age of majority, however the said application was rejected as time barred by the second respondent, which is arbitrary, illegal and contrary to law. Thus, the learned counsel sought to allow this writ petition by quashing the order impugned herein.

4.On the other hand, the learned Special Government Pleader appearing for the respondents submitted that the rejection order was passed in accordance with G.O.Ms.No.120 Labour and Employment Department dated 26.06.1995, wherein it was clearly stated that the application for compassionate grounds appointment should be made within three years from the date of death of the Government servant and hence, there is no violation of the provisions of law as alleged by the petitioner.

5.Heard both sides and perused the records.

6.There is no dispute that the petitioner's father died on 17.01.2003, while he was working in the respondent Department. At that time, the petitioner was 7 years old. She made application seeking compassionate appointment on 21.05.2013, when she was 17 years old, which was rejected stating that the petitioner did not attain majority. On reaching the age of majority, she made another application on 04.05.2015, which was also rejected on the ground that the application should have been made within a period of three years from the date of death of the Government servant, whereas the petitioner made application after a lapse of 10 years, by the proceedings of the second respondent dated 12.05.2015, which is impugned herein.

7.This Court finds no error or illegality in the proceedings issued by the second respondent, rejecting the claim of the petitioner seeking compassionate grounds appointment, as time barred, in the light of the recent G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020 which supersedes all the Government Order earlier passed from the year 1972, as per which, the application



seeking compassionate ground appointment should be made within a period of three years from the date of death of the Government servant.

8. Be it noted, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. However, it cannot be claimed as a matter of right and it is traceable only to the service rule permitting such appointment on compassionate basis or a scheme framed for this purpose. In *State of Haryana v. Rani Devi* [1996 (5) SCC 308], the Supreme Court 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".

9. It is also relevant 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. Accordingly, this writ petition deserves to be dismissed and is dismissed. No costs.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Police,
Tamil Nadu,
Chennai - 4.
2. The Commissioner of Police,
Salem City,
Salem District.

+1CC to M/s.R.Marudhachalamurthy, Advocate, Sr.No.20008
+1CC to Government Pleader, Sr.No.20822

W.P.No.23685 of 2016

SKY (CO)
K.RK. (19.07.2021)