

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2021
Delivered on : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.5123 of 2015
and
M.P.No.1 of 2015

R.Saranya

... Petitioner

..vs..

1. The Director General of Police
Mylapore, Chennai 4.

2. The Superintendent of Police
Cuddalore 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 of the First respondent in connection with the impugned order passed by him in Na.Ka.No.141260/C.A1/2014 dated 15.10.2014 and the Second Respondent in Na.Ka.No.N1/6585/2012 dated 26.11.2014 and quash the same and further direct the respondents to appoint the Petitioner on Compassionate ground as Junior Assistant in commensurate with the educational qualification and grant her all consequential service and monetary benefits.

For Petitioner : Mr.Venkataramani Sr.C for
Mr.M.Muthappan

For R1 & R2 : Mr.J.Ramesh AGP

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ORDER

The petitioner has come up with this writ petition to quash the orders dated 15.10.2014 and 26.11.2014 passed by the respective respondents 1 and 2 and consequently, direct the respondents to appoint her on compassionate ground as Junior Assistant in commensurate with the educational qualification and other relief.

2. According to the petitioner, her father viz., Ravichandran died on 21.10.2010 in a motor accident, while he was serving as Head Constable in Cuddalore District. His first wife by name Seethalakshmi predeceased him. After her death, the petitioner's father got married to one Maheswari and one male child was born through them. The petitioner further averred that after the death of his father, the retirement benefits were settled and the same were apportioned equally by her and her step mother Maheswari; and the petitioner is living with his paternal uncle after the death of the deceased. On coming to know that the application for compassionate appointment should be made within a period of three years, the petitioner made an application seeking the said relief on 16.12.2012 to the second respondent. Her stepmother Maheswari also made representation on 27.12.2012 for compassionate appointment. Both the representations were forwarded by the second respondent to the first respondent, who, by communication dated 15.10.2014, after examining the same, opined that the petitioner was born on 10.09.1995 and she attained the age of 18 years only on 10.09.2013 and hence, she should have applied for appointment between 09.09.2013 and 20.10.2013 i.e., within three years from the date of death of her father, after attaining majority and hence, her claim was rejected. Following the same, the second respondent passed an order dated 26.11.2014 rejecting the petitioner's representation. Hence, this writ petition.

3. The learned Senior Counsel for the petitioner submitted that the petitioner in order to save limitation for appointment on compassionate ground, submitted the representation on 16.12.2012, which is well within the three years from the date of death of her father, whereas the respondents rejected the petitioner's claim after a lapse of two years, on the ground that at the time of submitting the application, the petitioner was a minor and she should have applied for compassionate appointment between 09.09.2013 and 20.10.2013, after attaining majority. Such lapse on the part of the respondents is arbitrary, illegal and unsustainable in the eye of law and hence, the orders impugned herein are liable to be set aside. It is also submitted that the petitioner is eligible to receive the family pension till she reaches the age of 21 years and she is living with her paternal uncle and her stepmother is not supporting her and that, she is in indigent circumstances.

4. The learned Additional Government Pleader, reiterating the averments made in the counter affidavit filed by the respondents, submitted that the petitioner was born on 10.09.1995; at the time of death of her father on 21.10.2010, she was 15 years old and a minor and on 24.12.2012, she submitted an application and that was within three years from the date of death of her father, but a candidate for

compassionate appointment should have completed 18 years of age and hence, the petitioner should have submitted her application on completion of 18 years of age i.e., after 09.09.2013, but before 20.10.2013. He further submitted that the orders passed by the respondents are in accordance with the rules and there was no violation of principles of law and therefore, no interference is required in this writ petition.

5. Heard both sides and perused the records.

6. It is an admitted fact that the petitioner's father died on 21.10.2010, while he was in service. Though his second wife and his daughter through the first wife, i.e., the petitioner made representations seeking compassionate appointment, the respondents considered the petitioner's representation dated 16.12.2012 alone, however, rejected the same stating that at the time of making application, she was a minor and she should have applied for appointment between 09.09.2013 and 20.10.2013, after attaining majority. Feeling aggrieved, the petitioner is before this Court, stating that she is living with her paternal uncle and her stepmother is not supporting her and she is in indigent circumstances.

7. It is seen from the documents filed in the form of typed set of papers that the petitioner though minor, made representation seeking compassionate appointment to the second respondent on 16.12.2012 i.e., well within the time. On receipt of the same, the second respondent by communication in Na.Ka.No.1/54819/2012 dated 31.12.2012, directed the Inspector of Police, Cuddalore O.T., to conduct enquiry and call for the details with regard to the claim of the petitioner. However, the said file was kept pending, without any progress. In the mean while, after attaining majority, the petitioner said to have made another representation in March 2014. Only thereafter, the second respondent by communication in Na.Ka.No.1/6585/2012 dated 16.08.2014, forwarded the petitioner's representation as well her stepmother representation to the first respondent for opinion. The first respondent in turn, instructed the second respondent to reject the petitioner's representation on the ground that at the time of applying compassionate appointment, she was a minor and she should have applied for the same between 09.09.2013 and 20.10.2013 and hence, she was not eligible for such appointment. Following the same, the second respondent rejected the claim of the petitioner. Such orders were passed by the respective respondents 1 and 2 only on 15.10.2014 and 26.11.2014, i.e., after a lapse of two years. This Court is of the opinion that if the respondents had intimated the same to the petitioner immediately after receipt of the application, she would have made the application on the heels of attaining the age of majority, which is well before expiry of period of the

limitation and in that event, she might have been considered and given compassionate appointment, but due to the lapse on the part of the respondents, the petitioner has lost her opportunity of getting appointment on compassionate ground. Such callous and lethargic attitude cannot be countenanced. Hence, the orders impugned herein cannot be allowed to be sustained and are liable to be quashed.

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. 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 why, 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..."

9. 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."

10. In a judgment in *Mukesh v. State of Bihar* [(2017) 5 SCC 383], the Supreme Court held that "the compassionate appointment is meant to provide succour to the family of the deceased employee died in harness".

11. At this juncture, it is 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."

12.In view of the above discussion and reasonings, the orders impugned herein are set aside and the matter is remanded to the respondents for passing afresh order, after reconsidering the claim of the petitioner. Such an exercise shall be done, within a period of eight weeks from the date of receipt of a copy of this order.

13.This writ petition stands allowed in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To

1. The Director General of Police
Mylapore, Chennai 4.
2. The Superintendent of Police
Cuddalore District.

+2cc to Mr.M.Muthappan, Advocate, S.R.No.20583, 25368
+1cc to the Government Pleader, S.R.No.21057

W.P.No.5123 of 2015

BR(CO)
CB(07/07/2021)

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