

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NO.1552 OF 2019

G.Mahendran,
S/o.Late Govindasamy

.. Appellant

Vs.

1. Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Environment and Forest Department,
Fort St.George, Chennai-600 009.
2. The Principal Chief Conservator of Forests,
Head of Forest Force, No.1, Genies Road,
Panagal Maligai, Saidapet, Chennai-15.
3. The District Forest Officer,
Interfaced Forest Division (IFF),
Dharmapuri, Dharmapuri District.
4. The District Forest Officer,
District Forest Division,
Salem, Salem District.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.03.2019 passed by the learned Single Judge in Writ Petition in W.P.No.26734 of 2018 on the file of this Court.

W.P.No.26734 of 2018:-

Petition filed under Article 226 of the Constitution of India, praying this Hon'ble Court to issue a Writ of Certiorarified Mandamus, calling for the records of impugned order made in Na.Ka.No.Pa2/3238/2016, dated 26.04.2018 passed by the 4th Respondent herein and quash the same, consequently direct the Respondents to appoint the petitioner as Forest watcher or any other suitable post in the 4th Respondent Forest Division in order to protect his family livelihood forthwith.

For appellant : Mr.M.R.Jothimanian

For respondents: Mr.S.Prabhu, Addl.G.P.

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah,J)

The petitioner before the Writ Court is the appellant herein. This Writ Appeal is filed by the appellant/writ petitioner against the order dated 21.03.2019 passed by the learned Single Judge in Writ Petition in W.P.No.26734 of 2018 on the file of this Court, in and by which, the learned Single Judge had dismissed the said Writ Petition filed by the appellant/writ petitioner to quash the order dated 26.04.2018 passed by the fourth respondent and consequently to direct the respondents to appoint the appellant/writ petitioner as Forest Watcher or any other suitable post in the fourth respondent-Forest Division in order to protect his family livelihood forthwith.

2. The case of the appellant/writ petitioner is as follows:

(a) The appellant's father G.Govindasamy was appointed as Plot Watcher on 16.02.1982 by the District Forest Officer, Interfaced Forestry Division, Dharmapurai (third respondent). He was working originally in Uthangarai Interfaced Forestry Range of the third respondent-Division and thereafter, from 17.07.2004 till his death, he was working with the fourth respondent-Division. Due to sudden illness, the appellant/writ petitioner's father died in harness on 17.05.2010. The appellant is qualified in D.M.E., which he registered in the Employment Exchange. In view of the death of the father of the appellant/writ petitioner, the appellant's mother, namely Rani approached the fourth respondent on 27.12.2010 for the appointment of the appellant/writ petitioner on compassionate grounds and also for family pension to the appellant's mother. Thereafter, another application was also made to the respondents on 23.01.2012.

(b) Though the appellant's father worked with the respondents' Forest Department for more than 28 years, yet, the appellant's case for compassionate appointment was not considered. Hence, the appellant earlier filed W.P.No.39927 of 2016 for issuance of a Writ of Mandamus to direct the respondents to appoint him as Forest Watcher or in any suitable post in the Forest Department of the fourth respondent-Division under compassionate grounds in order to protect his family livelihood forthwith and the said W.P.No.39927 of 2016 was allowed, vide common order dated 01.02.2016.

(c) The appellant's mother and the appellant made an

application to the second respondent herein to consider his employment in the Forest Department under compassionate grounds. Curiously, the fourth respondent had rejected the appellant's application on 26.04.2018 on the ground that the appellant/writ petitioner had not applied within three years from the date of death of his father. The said rejection order dated 26.04.2018 passed by the fourth respondent, according to the appellant/writ petitioner, is totally against his application dated 23.01.2012 and also without application of mind.

3. Challenging the said order dated 26.04.2018 passed by the fourth respondent, the appellant had filed the Writ Petition, which was dismissed by the learned Single Judge by order dated 21.03.2019 in W.P.No.26734 of 2018, against which, the present Writ Appeal is filed by the appellant.

4. It is relevant to quote paragraphs 2 and 3 of the order under challenge passed by the learned Single Judge in W.P.No.26734 of 2018, dated 21.03.2019:

"2. The learned counsel for the writ petitioner states that the father of the writ petitioner Sri.G.Mahendran was appointed as Plot Watcher, during the year 1982 and died on 17.05.2010, while he was in service. However, no application seeking appointment on compassionate grounds was submitted within a period of three years as contemplated in the scheme of compassionate appointment.

3. The learned counsel for the writ petitioner further states that a representation dated 27.12.2010 is filed in page No.11 of the typed set of papers. However, there is no acknowledgement or any other proof issued by the respondents referring the said representation. In the absence of any acknowledgement or proof, the representation dated 27.12.2010, which is stated to have been submitted by the writ petitioner's mother, cannot be trusted upon. The petitioner submitted an application dated 23.06.2014 seeking for appointment on compassionate grounds and the said application was considered and rejected on 26.04.2018 on the ground that the application seeking for compassionate appointment has been made after a lapse of three years from the date of death of the deceased Government employee."

5. Thus, according to the learned counsel for the

appellant/writ petitioner, the learned Single Judge dismissed the Writ Petition mainly on the reason that there is no acknowledgement or any other proof issued by the respondents in respect of the application seeking for compassionate appointment, which according to the learned Single Judge, would show that the appellant/writ petitioner had not submitted the application within three years from the date of death of the deceased Government employee. The further submission of the learned counsel for the appellant/writ petitioner is that originally, the writ petitioner submitted application on 27.12.2010 and thereafter, within a period of nearly one and a half year, again on 23.01.2012, the appellant/writ petitioner submitted another application through his mother. The learned counsel further contended that a reference was also made about the latest representation, dated 23.01.2012 in the affidavit filed in support of the Writ Petition. The said representation dated 23.01.2012 was duly received by the respondent(s) affixing their seal. To substantiate this contention, the learned counsel for the appellant/writ petitioner had also produced a copy of the said representation, dated 23.01.2012, which is stated to have been sent by the appellant's mother on his behalf. This representation/application contains the seal of the District Forest Office, Salem Forest Division, dated 23.01.2012. Therefore, the learned counsel for the appellant submitted that the appellant/writ petitioner had submitted the application on 23.01.2012 seeking for compassionate appointment, which is within three years from the date of death of his father being 17.05.2010. Hence, the learned counsel for the appellant prayed that a direction may be given to the respondents to consider the said representation/application, dated 23.01.2012 and to pass appropriate orders.

6. Opposing the above submissions, the learned Additional Government Pleader appearing for the respondents submitted that the said representation, dated 23.01.2012 which is stated to have contained the seal, had not been produced before the learned Single Judge, and therefore, now, at this appellate stage, the appellant/writ petitioner cannot rely upon the same and thus, he prayed for dismissal of the Writ Petition.

7. Heard both sides and perused the materials available on record.

8. Be that as it may. The appellant/writ petitioner has now produced a copy of the said representation, dated 23.01.2012, which contains the seal of the District Forest Office, Salem Forest Division, Salem-7, dated 23.01.2012. This shows that the appellant/writ petitioner's mother, on behalf of the appellant, had submitted the said representation, dated 23.01.2012 within three years from the date of death of the appellant's father

being 17.05.2010. It is trite law that the appeal is continuation of the original proceedings, and hence, it is open for the appellant to produce the relevant materials even at the appellate stage for consideration by the Court.

9. Hence, this Court directs the respondents to consider the claim of the appellant/writ petitioner and pass appropriate orders on merits with regard to providing compassionate appointment, within a period of four weeks from the date of receipt of a copy of this judgment.

10. With the above direction, the Writ Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Environment and Forest Department,
Fort St.George, Chennai-600 009.
2. The Principal Chief Conservator of Forests,
Head of Forest Force,
No.1, Genies Road, Panagal Maligai,
Saidapet, Chennai-15.
3. The District Forest Officer,
Interfaced Forest Division (IFF),
Dharmapuri,
Dharmapuri District.
4. The District Forest Officer,
District Forest Division,
Salem, Salem District.

+1cc to the Special Government Pleader, S.R.No.4843

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CS/24/03/2021