



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No. 30563 of 2016

1.C.Muthulakshmi
2.C.Elavarasan

... Petitioners

/Vs/

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Revenue Divisional Officer,
Krishnagiri.

3.The Tahsildar,
Krishnagiri Taluk,
Krishnagiri.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings passed in Na.Ka.No.24290/2012/A3, dated 20.07.2016 on the file of the first respondent herein, quash the same and consequently directing the respondents herein to consider the appointment of the second petitioner under compassionate grounds due to the death of his father while he was in service within stipulated period.

For Petitioners : Mr.K.Govi Ganesan

For Respondents : Mr. K.Tippu Sulthan
Government Advocate.

O R D E R

Writ Petition is filed to call for the records relating to the impugned proceedings passed in Na.Ka.No.24290/2012/A3, dated 20.07.2016 on the file of the first respondent herein, quash the same and consequently directing the respondents herein to consider the appointment of the second petitioner under compassionate grounds due to the death of his father while he was in service within stipulated period.

2. One Mr.Chellan, while working as a Village Administrative Officer at Krishnagiri Taluk died on 25.03.2003. While the first petitioner is his widow, the second petitioner is his son.



3. The first petitioner herein had made an application on 05.02.2013 seeking for compassionate appointment. At that point of time, the second petitioner herein was a minor, aged about 8 years. Since there was no consideration of her application, the second petitioner herein made representations on 27.08.2012 and on 13.04.2015, seeking for compassionate appointment. The original application of the second petitioner was rejected through the impugned order dated 20.07.2016 stating that the second petitioner was only 17 years and 8 months and that he had made an application after 9 years from the date of death of his father.

4. It is not in dispute that the wife of the late employee had made an application within a period of three years from the date of death of her husband. In fact, the first petitioner's application dated 05.02.2013 was also acknowledged by the Tahsildar of Krishnagiri through his proceedings dated 15.05.2003 and her application was not considered at that point of time stating that there was a ban for employment on compassionate ground.

5. The present impugned order rejecting the petitioners claim is on two folds. Firstly, that the original application dated 27.08.2012 cannot be considered since the second petitioner was a minor and consequently, he had made the application after a period of 9 years. It is now stated that thereafter the second petitioner has made an application on 13.04.2015 which apparently is within three years of the petitioner becoming a major.

6. The issue as to whether a minor can make an application within three years from the date of which he attains majority, in cases where the minor's mother had made an application within three years from the date of death of the employee, had come up for consideration on various occasions before this court and in one such writ petition, this court had relied upon the earlier decision of this court and had upheld that such an application made by the legal heirs within three years after attaining majority, is maintainable. The relevant portion of the order passed in W.P.(MD)No.12593 of 2016 dated 29.06.2020 reads as follows:-

"4. This court in various decisions has held that a minor legal heir is entitled to make request for compassionate appointment within 3 years from the date he attains majority. One such order passed by this Court in W.P.No.26343 of 2012 dated 23.11.2016 in the case of M.Sathish Kumar vs. the"Director of School Education and others, had placed reliance on two orders of the Hon'ble Division Benches of this Court and ultimately held



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that, when an application is made within three years from the date of attaining majority, the claimant would be entitled for appointment on compassionate grounds. The relevant portion of the order reads as follows:

'4. In this context, a Division Bench of this Court in a judgment reported in The Chief Engineer/Personnel, T.N.E.B., & another Vs. S.Suder reported in MANU/TN/0635/2009 was held as follows:

"4. In the judgment reported in 2001 Writ L.R.601 in the case of "Ramadoss.D. Vs. The Chief Engineer, T.N.E.B.", this Court (D.Murugesan, J) directed the consideration of the application made within a period of three years after attaining the majority by placing reliance on the very same Circular in B.P.No.46, dated 13.10.1995.

5. Subsequently, in the judgment reported in 2002(4) L.L.N.1132, (D.Murugesan, J.), in the case of "P.Ravi V. Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on compassionate grounds was directed to be considered.

6. Justice P.D.Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P.No.19673 of 2003, in the order dated 23.09.2003, in the case of "J.Jayakaran Vs. The Superintending Engineer, Theni Electricity Distribution Circle, Theni" and the application for appointment on compassionate grounds was directed to be considered.

7. Justice K.Govindarajan has also taken the same view in Writ Petition No.13099 of 2003, order dated 30.10.2003, in the case of "G.Muthamilselvan V. The Chief Engineer (Personnel) and Anr."

8. Justice F.M.Ibrahim Kalifulla has also taken the same view in the decision reported in 2004(3) CTC 120, (2004) MLJ 238 in the case of "Meer Ismail Ali.T. V. The Tamil Nadu Electricity Board". We are told that the order in the said case of "Meer Ismail Ali" was confirmed in the Writ Appeal by the Division Bench in W.A.No.4008 of 2004, by judgment dated 1.12.2004 and as against the said judgment dated 1.12.2004, the Special Leave Petition in Civil Appeal No.6387 of 2005, was



also dismissed by the Supreme Court, by judgment dated 4.4.2005."

5. In a very similar issue, a Division Bench of this Court in W.P.No.3050 of 2003 observed as follows:

"9. Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No.3050 of 2003 in the case of "Indiraniammal V. The Chief Engineer (Personnel) and Anr." and by judgment dated 08.03.2005, the Division Bench set aside the impugned order therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to consider the application.

10. There cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, by-passing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints of a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the office of the Assistant Engineer, TNEB, Kazhuvanthilai, Kanyakumari District, died due to illness on 07.03.1998. At the time of the death of his father, the respondent was 15 years old and for the purpose of making application for appointment on compassionate

grounds, he should have completed 18 years. Hence, he could not make any application for appointment on compassionate grounds. By placing reliance on B.P.No.46, dated 13.10.1995, he made application on 3.9.2002, within a period of four days from the date of his attaining majority, i.e., 18 years. That



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application was rejected on the ground that the same cannot be entertained as per the Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis of the Memo, dated 6.4.2002.

12. As we have already referred that the application for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board proceedings in B.P.No.46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority."

6. If the above proposition is applied to the present facts of the petitioner, then the petitioner would be entitled for an appointment on compassionate ground, since the application has been made within a period of three years from the date of attaining majority. Since this application for compassionate appointment was rejected on the sole ground that the same was time barred and by applying the ratio in the decision of the Division Bench, the impugned order cannot be sustained and is liable to set aside. Accordingly, the impugned order dated 31.01.2012 passed by the third respondent is quashed.'

5. The aforesaid order is self explanatory. As such, the issue as to whether the widow or any other legal heir, who was major at the time when the employee had expired, had or had not made an application within three years from the date of death becomes immaterial. What would suffice is as to whether the minor legal heir had made an application seeking for compassionate appointment within three years from the date he had attained his majority.

6. In the instant case, the petitioner had become major on 10.02.2014. In view of the aforesaid



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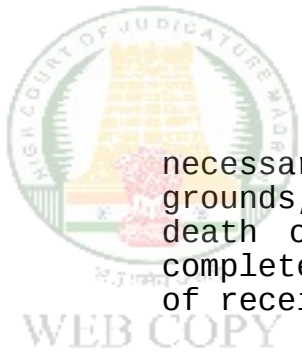
findings he would be entitled to seek compassionate appointment till 10.02.2017. However, his application was already pending before the first respondent and the impugned order of rejection came to be passed in the year 2016, which is before the expiry of three years from the date on which the petitioner had attained majority.

7. Apart from the above observations, the Hon'ble Division Bench of this Court had earlier in an order passed in W.A.(MD)No.1400 of 2011 dated 16.12.2015 in the case of S.Velraj Vs. The Superintendent Engineer, TNEB, Tirunelveli and another, had held that three years limitations prescribed for making an application for compassionate appointment cannot be applied in a strait jacket formula and each and every case has to be approached differently, based on the facts. The Scheme for appointment on compassionate ground to the children of the deceased employee is a welfare scheme, to tide over the financial constraints of the bereaved family due to the sudden demise of the breadwinner of the family. As such, the mother's application on behalf of the petitioner, was deemed to be pending for atleast 3 years from the day on which the petitioner became a major and the pre-matured rejection order stating that the petitioner had not completed 18 years at the time of his application, cannot be sustained.

8. In view of all these reasons, the rejection itself is not proper and consequently, the petitioner would be entitled for appointment on compassionate grounds."

7. The aforesaid order is self-explanatory. As such, when it is not in dispute that the widow of a late employee had made an application within three years from the date of the death of the employee and thereafter, the son of the late employee had made an application seeking for compassionate appointment, within three years from the date on which he became a major, such an application is maintainable and consequently, her son would be entitled for consideration for compassionate appointment. As a result, the reasons assigned in the present impugned order cannot be sustained.

8. In the light of the above observations, the impugned order dated 20.07.2016 on the file of the first respondent herein is quashed. Consequently, the first respondent herein is called upon to reconsider the second petitioner's application dated 13.04.2015 for compassionate appointment and pass



necessary orders for grant of appointment on compassionate grounds, without quoting the three years period from the date of death of the employee, as a bar. Such an exercise shall be completed atleast within a period of three months from the date of receipt of a copy of this order.

9. With the above directions, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

gv

To

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Revenue Divisional Officer,
Krishnagiri.

3.The Tahsildar,
Krishnagiri Taluk,
Krishnagiri.

+1CC to The Government Pleader, SR.No.SR.No. 34937

+1CC to M/s.K.Govi Ganesan, SR.No. 34459

W.P.No. 30563 of 2016

SSV(CO)

B.VC (25/08/2021)