

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.03.2021

Coram :

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

Writ Appeal No.1885 of 2019

Tmt.M.Mangayarkarasi,
W/o Late A.Muniappan

.. Appellant/Petitioner

Versus

1. The Principal Secretary to Government,
Animal Husbandry, Dairying and
Fisheries Department,
Secretariat, Chennai-600 009.
 2. The Director,
Animal Husbandry and Veterinary Services,
Central Office Buildings,
Block-II, Nandanam,
Chennai-600 035.
 3. The Regional Joint Director,
Animal Husbandry and Veterinary Services,
Kancheepuram.
- .. Respondents/Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 15.03.2019 passed by the learned Single Judge, in W.P.No.20761 of 2018 on the file of this Court.

Prayer in W.P.No.20761 of 2018

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the Second Respondent to consider the representation dated 12.07.2018 for employment of the petitioner's daughter on compassionate grounds.

For Appellant : Mr.P.Paramasiva Doss
For Respondents : Mrs.A.Srijayanthi, Spl.G.P.

JUDGMENT

R.SUBBIAH, J

This appeal is filed as against the order passed by the learned Single Judge in dismissing the Writ Petition filed by

the appellant herein for issuance of a Writ of Mandamus to direct the second respondent to consider the representation dated 12.07.2018 for employment of the writ petitioner's daughter on compassionate grounds.

2. Brief facts which are necessary to decide the issue involved in the Writ Appeal are as follows:

The appellant's husband, namely A.Muniappan was employed in the Veterinary Department as Livestock Inspector Grade-I at Kancheepuram. He died on 03.06.2005 while in service leaving his four daughters (three daughters through first wife and one daughter through the appellant herein). His first wife died on 13.12.1990. After the demise of her husband, the appellant was suffering financially and hence, she submitted an application to the Assistant Director of Animal Husbandry and Veterinary Services, Kancheepuram on 29.05.2006 seeking for suitable employment in the Department on compassionate grounds. Her application was acknowledged and she was called upon to produce certain documents, which were also furnished by her to the respondent-authorities on 29.09.2006. Thereafter, she was continuously following up the matter with the office in Kancheepuram for the past 11 years, but there was no positive response forthcoming. Finally, she sent a representation to the Director of the Animal Husbandry and Veterinary Services, Chennai on 24.11.2017 expressing her plight. Even this did not evoke any positive response. However, based on her representation, the Regional Director of Animal Husbandry at Kancheepuram, vide letter dated 16.02.2018, addressed to the Director of Animal Husbandry and Veterinary Services, Chennai, forwarded all the documents submitted to them on 29.09.2006. Thereafter, there was long silence. Hence, the appellant sent another representation on 12.07.2018 to the second respondent to provide job for her daughter, since the appellant had become aged about 54 years. It is stated by the appellant that her daughter had passed M.Sc. and she is about 23 years by then. This representation was also not considered. Hence, the appellant had filed Writ Petition seeking for the relief stated supra.

3. The learned Single Judge dismissed the Writ Petition holding that the appellant/writ petitioner had not submitted her application within 3 years from the date of death of her husband seeking for employment for her daughter, and hence, she is not entitled to the relief sought for by her.

4. The learned counsel for the appellant/writ petitioner submitted that the appellant's husband died in harness on 03.06.2005 and hence, earlier, she submitted her first application on 29.05.2006 within three years from the date of death of her husband. It is the respondent(s) who had been

keeping silent for the past 11 years. Then, she made a representation on 24.11.2017 to the Director of Animal Husbandry and Veterinary Services, Chennai, and the Regional Joint Director of Animal Husbandry at Kancheepuram addressed to the Director of Animal Husbandry and Veterinary Services, Chennai with all documents submitted by her on 29.09.2006, which shows that her application was under consideration with the respondents-authorities. While so, the dismissal of the Writ Petition by the learned Single Judge on the reasoning that the appellant's application was not submitted within three years, is not correct. Thus, the learned counsel for the appellant prayed for setting aside the order passed by the learned Single Judge and to issue appropriate direction to the respondents to consider her application seeking compassionate appointment for her daughter.

5. Countering the above submissions, the learned Special Government Pleader appearing for the respondents submitted that, initially, the appellant did not seek employment for her daughter. She was seeking employment for herself and only in 2018, after a period of 13 years from the date of death of her husband, for the first time, she submitted application seeking employment for her daughter, which was not submitted within three years. Therefore, the learned Single Judge had rightly dismissed the Writ Petition by passing detailed order. Thus, there is no infirmity in the order passed by the learned Single Judge and he prayed to dismiss the Writ Appeal.

6. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

7. We find that, as contended by the learned Special Government Pleader appearing for the respondents, though initially the appellant had submitted her representation seeking for herself an appointment on compassionate grounds, after a lapse of 13 years from the date of death of her husband, she had submitted another representation seeking compassionate appointment for her daughter. Therefore, considering this aspect of the matter, the learned Single Judge had correctly dismissed the Writ Petition.

8. It is to be noted that the application seeking employment on compassionate grounds for the appellant's daughter has nothing do with the application submitted by her in the year 2006 seeking employment for herself. When that being the position, the appellant cannot seek to consider her application submitted by her in the year 2006 as the basis for appointing her daughter on compassionate grounds. Therefore, the submission made by the learned counsel for the appellant is liable to be rejected.

9. Further, we wish to observe that appointment on compassionate grounds, as observed by the Supreme Court in a catena of decisions, is to be made only to relieve the suffering of the family members of the deceased from the immediate financial distress. The intention behind appointing a person on compassionate ground is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-winner who had left the family in penury and without any means of livelihood. The reason for compassionate appointment, according to the Government, is to ameliorate the grievance of the family whose breadwinner died in harness and in view of the indigent circumstances prevailing at the time of death. Thus, one has to understand that the compassionate appointment is not a bounty given by the Government and it is only to relieve the financial stress of the bereaved family on account of the death of a Government servant in harness. Therefore, the compassionate appointment will be considered by the Government in deserving cases based on the Rules existing as on date and not to leave the person seeking compassionate appointment in lurch. In this case, the family of the appellant survived for about a decade without any consideration for appointment on compassionate grounds, which would only give an impression that the appellant's family had some source of livelihood to lead a decent life even after the death of the Government servant.

10. It is also worth mentioning a decision of the Supreme Court on the subject, reported in 2011 (4) SCC 209 (Bhawani Prasad Sonkar Vs. Union of India), relevant portion of which reads as follows:

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de-hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to be meet the sudden crisis

occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largess irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz., Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

11. Furthermore, a Full Bench of this Court in W.P.(MD). No.7016 of 2011, etc., dated 11.03.2020, had given a quietus to the matter by authoritative pronouncement with regard to the compassionate appointment, and the relevant portion of the same reads as follows:

"32. In view of the above, the reference is answered as under:

a) 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.

b) In view of the above the judgment of the Division Bench in E.Ramasamy Vs. Tamil Nadu Electricity Board and the Secretary to Government Vs. Renugadevi, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down the correct proposition. Reference is answered accordingly."

12. Further, in the case on hand, there is an inordinate delay of 13 years in seeking employment for the daughter of the appellant on compassionate grounds.

13. Therefore, we do not find any infirmity in the order passed by the learned Single Judge warranting interference by this Court. The Writ Appeal is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Principal Secretary to Government,
Animal Husbandry, Dairying and
Fisheries Department,
Secretariat, Chennai-600 009.
2. The Director,
Animal Husbandry and Veterinary Services,
Central Office Buildings,
Block-II, Nandanam,
Chennai-600 035.
3. The Regional Joint Director,
Animal Husbandry and Veterinary Services,
Kancheepuram.

+1cc to Mr.J.Pradeep, Advocate, S.R.No.15684

+1cc to the Government Pleader, S.R.No.15437

सत्यमेव जयते

Judgment in
W.A.No.1885 of 2019

AAB(CO)
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