

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.6184 of 2014
&
MP.No.2 of 2014

N.Illamalli

... Petitioner

...vs...

1. The Government of Tamil Nadu
Represented by its Principal Secretary
Health and Family Welfare Department
Fort St. George, Chennai - 600 009.
 2. The Director of Medical Education
Kilpauk, Chennai - 600 010.
 3. The Director
King Institute of Preventive Medical & Research Centre,
Guindy, Chennai - 600 032.
- ... 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 relating to the third respondent herein in R.C.No.6039/Ne 2/2000 dated 01.02.2013 and quash the same and consequently direct the respondents herein to confer the Compassionate ground appointment to the Petitioner's son Saravanan.

For Petitioner : M/s R.S.Anandan

For Respondents : Mr.P.Chinnadurai AGP

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ORDER

The prayer made in this writ petition is to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent in R.C.No.6039/Ne.2/2000 dated 01.02.2013 and quash the same and consequently direct the respondents to confer the Compassionate ground appointment to the Petitioner's son Saravanan.

2.It is the case of the petitioner that her husband viz., M.Nagappan, while working as Research Technician Grade - II, died in harness on 17.01.1992. Immediately, the petitioner submitted an application dated 23.09.1992 to the third respondent seeking compassionate appointment to her son Saravanan, which was rejected on the ground that the son of the petitioner was aged 12 years. On attaining the age of majority by her son, the petitioner again made an application on 05.05.1999 seeking compassionate appointment, which was rejected by the third respondent by order dated 01.02.2013, without giving any reason. Hence, this writ petition.

3.Upon notice, the respondents filed a detailed counter affidavit, wherein, it is inter alia stated that the petitioner submitted 1st application on 23.09.1992 without any enclosures in support of her claim, requesting appointment on compassionate ground to her son Saravanan, who was a minor and had not completed the prescribed the age of 18 years and hence, he was not eligible for employment at that time. It is further stated that on attaining the age of 18 years by her son, the petitioner again submitted an application on 05.05.1999 requesting compassionate ground appointment to him; and soon after the ban was lifted, the petitioner's request was considered and was ultimately rejected due to the fact that the application was not made within the prescribed time limit of 3 years from the date of death of the Government servant. It is also stated therein that the family of the deceased Government servant was not in indigent circumstances, in view of the fact that the application for compassionate appointment was made for the son after he attained eligibility with regard to age and qualification, while eligible legal heirs were available for such appointment on the date of death of the Government servant. With these averments, the respondents prayed for dismissal of this writ petition.

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

5.In this writ petition, the order dated 01.02.2013 passed by the third respondent rejecting the application made by the petitioner seeking compassionate appointment to her son, on the ground of limitation, is under challenge.

6.Though the learned counsel for the petitioner raised very many grounds to set aside the order impugned herein, the same cannot be countenanced by this Court, having regard to the admitted fact that at the time of death of his father on 17.01.1992, the petitioner's son was 12 years old and was a minor; and the second application submitted on 05.05.1999 by the petitioner for her son on attaining the age of majority, seeking compassionate appointment, was beyond the prescribed limit of

three years. As per G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020, which supersedes all the earlier orders passed from 1972, the application for the compassionate ground appointment should be made within 3 years from the date of death of the Government servants. Hence, the order passed by the third respondent does not call for any interference by this Court.

7.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".

8.It is also apropos 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."

9. 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."

10.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.

11.In such view of the matter, the writ petition deserves to be dismissed and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Principal Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai - 600 009.
2. The Director of Medical Education
Kilpauk, Chennai - 600 010.
3. The Director
King Institute of Preventive Medical & Research Centre,
Guindy, Chennai - 600 032.

+1cc to Mr.R.S.Ananda, Advocate, S.R.No.19855
+1cc to the Government Pleader, S.R.No.20152

W.P.No.6184 of 2014

RSV(CO)
CB(06/07/2021)

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