

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 29.03.2021
Delivered on : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
Writ Petition No.18907 of 2014

K.Durgadevi

... Petitioner

..vs..

1. The Superintendent of Police
Trivellore District.
 2. The Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai - 4.
 3. The Secretary to Government
Home (Police II) Department
Fort St. George, Chennai - 9.
- ... 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 in Na.A.Vu.Mu.A 4/7920/2009 dated 25.06.2014 and quash the same and further direct the respondents to appoint the Petitioner on Compassionate ground in commensurate with her Educational and grant her all cons equated service benefits.

For Petitioner : Mr.Venkataramani, Sr.C for
M/s. M.Muthappan

For R1 to R3 : Mr.J.Ramesh, AGP

ORDER

The prayer made in this writ petition is to call for the records of the first respondent relating to the order passed in Na.A.Vu.Mu.A 4/7920/2009 dated 25.06.2014 and quash the same and consequently direct the respondents to appoint the petitioner on compassionate ground.

2.The case in brief is as follows:

The Petitioner's father by name Kumar was serving in the Police Department for more than 10 years as Gr-II Police Constable and died on 05.07.2007, while he was in service on account of an accident. The petitioner's mother predeceased him on 04.02.2002. After the death of the deceased employee,

his three children including the petitioner, who were minors, were taken care of by their maternal uncle K.Venu, in the capacity as guardian. The retirement benefits were settled to the said guardian, as per the order of the court. He also submitted an application on 30.04.2009 to the first respondent seeking compassionate appointment for the petitioner, which was rejected on 27.08.2009 on the ground that the petitioner was only a minor and was not eligible for any appointment. Subsequently, on attaining majority, the petitioner made a representation dated 16.06.2014 to the first respondent requesting for compassionate appointment. By order dated 25.06.2014, the said representation was also rejected by the first respondent stating the very same reason as referred to in the earlier communication dated 27.08.2009. Feeling aggrieved, the petitioner is before this Court with the present writ petition.

3.The learned Senior Counsel appearing for the petitioner submitted that at the time of death of his father, the petitioner was a minor and hence, her guardian made application to the first respondent seeking compassionate appointment, which is well within the period of limitation. However, the said application was rejected on 26.08.2009 stating the petitioner was a minor and she was not eligible for any appointment. Therefore, after attaining majority, she submitted the representation dated 16.06.2014 to the first respondent, which was also rejected by the impugned order, citing the same reason that the petitioner was minor at the time of death of her father. The order so passed by the first respondent is arbitrary and illegal and hence, the same is liable to be set aside. The learned Senior Counsel further submitted that the petitioner's family is in indigent circumstances and they do not possess any movable and immovable properties and they are eking out their livelihood with the family pension provided to them. Therefore, the learned Senior Counsel sought indulgence of this Court in favour of the petitioner.

4.On the other hand, the learned counsel for the respondents submitted that according to the Government order relating to compassionate appointment, the application should be submitted within three years from the date of death of the Government servant and the age limit for the eligible candidate is 18 years at the time of submitting the application, whereas, the petitioner was minor at the time of death of the deceased employee and she remained the same status within the limitation period of three years and hence, her claim for compassionate appointment was not considered by the first respondent. It is also submitted that compassionate ground appointment cannot be claimed as a matter of right and it is a Scheme devised by the Government to help the needy legal heirs whose lives are at distress after the Government servant dies in harness. Therefore, the order impugned herein does not require any interference by this Court.

5.This Court considered the rival submissions and carefully perused the materials available on record.

6.Admittedly, the petitioner's father died on 05.07.2007, while he was in service. Though the guardian of the petitioner made a representation on 30.04.2009 to the first respondent seeking compassionate appointment to the petitioner, which is well within the period of limitation, the petitioner was a minor at that time. On reaching the age of majority, she made representation dated 16.06.2014 to the first respondent seeking appointment on compassionate ground, after a lapse of 7 years from the date of death of her father, which is certainly barred by limitation. Therefore, the reason stated in the order passed by the first respondent, which is impugned herein, while rejecting the petitioner's application, is valid in law and the same requires no interference at the hands of this Court. Further, the recent G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020 supersedes all the Government Order earlier passed from the year 1972 thereby curtailing the power of the respondents granting any consideration for compassionate appointment.

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, this writ petition is liable to be dismissed and is accordingly, dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Police
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Dr.Radhakrishnan Salai
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3. The Secretary to Government
Home (Police II) Department
Fort St. George, Chennai - 9.

+2ccs to Mr.M.Muthappan, Advocate SR.No. 25367,20582

+1 cc to Government Pleader Sr.No. 25692

W.P.No.18907 of 2014

Br (CO)

A.SK(08.07.2021)