

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.22128 of 2019

and

W.M.P.No.21404 of 2019

(Heard through VC)

R.Ziyaullah

...Petitioner

-vs-

The Commissioner,
Krishnagiri Municipality,
Krishnagiri.

...Respondent

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus to call for records on the file of respondent in proceedings Na.Ka.38646/2016/H2 dated 27.03.2018 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to reconsider the petitioner providing with an appointment on compassionate ground in any suitable post.

For Petitioner : Ms.R.Poornima

For Respondent : Mr.K.Sathiyamurthi
Government Advocate

O R D E R

The writ petition has been filed challenging the order passed by the respondent in proceedings No.Na.Ka.38646/2016/H2 dated 27.03.2018 and for a consequential direction to the respondent to reconsider the petitioner providing with an appointment on compassionate ground in any suitable post.

2. Mr.K.Sathiyamurthi, learned Government Advocate takes notice on behalf of the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. The petitioner, who is the son of the deceased has made an application on 02.01.2013 for compassionate appointment for the demise of his father on 07.02.2010. On that date he was 16 years old. The application was returned by the respondent on 05.11.2013 stating that the petitioner has not completed 18 years. The learned counsel for the petitioner would submit that the petitioner had attained majority on 28.02.2014 and thereafter he made an application on 23.09.2015 after 18 months

of the date of attaining the majority. The application has been rejected on 27.03.2018 stating that the application has not been submitted within a period of three years from the date of demise of his father and that the petitioner has not completed 18 years of age. Aggrieved by the said order, the petitioner is before this Court.

4. Though the application has been made within a period of three years from the date of demise of the petitioner's father, the petitioner was aged about 16 years and there is no evidence to show that the order dated 05.11.2013 permitted the petitioner to apply afresh after attaining the age of 18 years.

5. The learned Government Advocate has contended that the issue with regard to compassionate appointment is well settled now and the Hon'ble Full Bench of this Court in the case of K.Shanmugam Vs. Tamil Nadu State Transport Corporation, rep. by its Managing Director, Villupuram [W.P.(MD) Nos.7016 of 2011 etc. batch] decided on 11.03.2020, elaborately discussed the core issue arising out of compassionate appointment and held that the application for appointment on compassionate grounds should be made within three years of the death of Government servant and not from the date of attainment of majority. For the sake of convenience, the relevant paragraphs of the judgment are extracted hereunder:

"3. The State of Tamil Nadu, has passed different Government orders for framing schemes for providing appointment on compassionate basis.

4. The first of such schemes framed by the Government is dated 15.02.1972, passed in G.O.Ms.No.225, (Labour). The relevant portion of the said G.O which brings out the scheme reads as under:-

"The proposals mentioned in para 1 and 2 above have been examined by Government in detail. The Government direct that the general procedure of recruitment through the Employment Exchanges to all the posts which fall outside the purview of the Tamil Nadu Public Service Commission be relaxed in favour of the Son/Daughter/Near relative who would take care of the family of a Government Servant who dies ill harness leaving his family in indigent circumstances, subject to the following conditions:-

a) The candidates should possess all the prescribed qualification for the posts concerned.

- b) The power to waive the normal procedure of recruitment through the Employment Exchange will be vested with Secretaries to Government of the departments concerned.
- c) The concurrence of the Labour Departments should be obtained before making such appointments."

13. In the light of the above we find that the judgment in the case of A. Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E. Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

6. I have also considered various judgments of the Apex Court and rendered a finding with regard to compassionate appointment in the case of S.Gowtham Balu The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai - 600 002 and another [W.P.(MD) Nos.4129, 7045, 16624 and 20786 of 2014] decided on 24.09.2018.

7. The Apex Court in the case of Bhawani Prasad Sonkar vs. Union of India reported in 2011 (4) SCC 209, held as under:

"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 of 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 meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread-winner while in service. Therefore,

compassionate employment cannot be granted as a matter of course by way of largesse 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."

8. In terms of the judgments of the Apex Court and Division Bench (supra), it is clear that the application has to be submitted within three years from the date of death of the deceased employee and not from the date of attaining majority. The rejection order states that the application has not been made within a period of three years, which is not correct, as the petitioner was minor at that time. Though other family members could have sought for compassionate appointment, they miserably failed to do so. The petitioner at this distant point of time, cannot seek for the relief by filing this writ petition. If the ratio laid down by the Hon'ble Full Bench of this Court is applied in the present case, in the considered opinion of this Court, the request of the petitioner for compassionate appointment has no substance and the Writ Petition is liable to be dismissed.

9. Accordingly, this Writ Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

The Commissioner,
Krishnagiri Municipality,
Krishnagiri.

+1 CC to M/s.R. Poornima, Advocate sr 14461.

+1 CC to Mr.V. Jayaprakash Narayanan, Advocate sr 14044

W.P.No.22128 of 2019

and

W.M.P.No.21404 of 2019

SS (CO)
SP(08/07/2021)