

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2021

Coram:

HONOURABLE MR.JUSTICE R.SUBBIAH  
and  
HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2761 of 2019

R.Kothandan, S/o (late) K.Renu .. Appellant/Petitioner

Vs.

1. The State of Tamil Nadu,  
Rep. by the Director General,  
Highways Department,  
PWD Complex, Kamarajar Salai,  
Chepauk, Chennai-600 005.
  2. Chief Engineer (Construction and Maintenance),  
Highways Department,  
PWD Complex, Kamarajar Salai,  
Chepauk, Chennai-600 005.
  3. The Divisional Engineer,  
Highways Department,  
Building and Maintenance Office,  
Tiruvannamalai-606 601.
- .. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 06.02.2019 passed by the learned Single Judge in Writ Petition No.25936 of 2014 on the file of this Court.

Prayer in WP.NO.25936 of 2014: The Writ Petition is filed under Article 226 of Constitution of India, to issue a writ of certiorarified mandamus, calling for the records of the 1<sup>st</sup> respondent in memo No.Estt 1/(1)/12991/2013 dated 07.05.2013 and memo No.1272/2013/B2 dated 16.08.2013 of the 3<sup>rd</sup> respondent quash the same and consequently direct the 1<sup>st</sup> respondent to consider and appoint the petition to the post of Junior Assistant on compassionate grounds with all attendant benefits flowing there from.

For appellant : Mr.Karthik Rajan, for M/s.Menon

For respondents: Mrs.A.Srijayanthi, Spl.G.P.

## JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This Writ Appeal is directed against the order dated 06.02.2019 passed in Writ Petition No.25936 of 2014, whereby the learned Single Judge dismissed the Writ Petition filed by the appellant/writ petitioner seeking compassionate appointment.

2. The brief facts which are necessary for disposal of this Writ Appeal are as follows:

(a) The appellant/writ petitioner's father was working as Salai Paniyalar under the third respondent. He was a regular employee in the Highways Department of the Government of Tamil Nadu. His father was the sole earning member of the entire family. The appellant/writ petitioner's father died in harness on 11.11.1988, leaving behind the writ petitioner, his two brothers and two sisters as his legal heirs. At the time of death of his father, the writ petitioner was a minor. After attaining majority in the year 1995, he made an application to the second respondent seeking appointment to the post of Junior Assistant on compassionate grounds in the Highways Department. The said application was rejected by the Superintending Engineer of Villupuram Division of the Highways Department, by order dated 29.03.2000 on the ground that the application was submitted after nine years from the date of death of his father, and thus, it was belatedly submitted.

(b) According to the writ petitioner/appellant, the Government of Tamil Nadu, issued a clarificatory letter in No.39924/Q1/95-1, dated 11.10.1995 to G.O.(Ms).No.120, Labour and Employment Department, dated 26.06.1995 to the effect that the time limit of three years for submitting an application seeking compassionate appointment is applicable only to the Government servants who died on or after 26.06.1995. Hence, on that basis, the appellant/writ petitioner submitted another application to the second respondent on 22.05.2006 seeking re-consideration of his earlier application for compassionate appointment. On receipt of the second application, the second respondent, vide Memo No.Estt.7(1)/42887/05, dated 26.09.2006, after due consideration and scrutiny of the same, registered it and assigned waiting list No.585-A for being appointed. The said Memo further revealed that appointments on compassionate grounds have been cleared upto Waiting List No.320. Therefore, the appellant/writ petitioner was bona-fidely waiting for his turn.

(c) While so, by letter in No.620/B2/2006, dated 11.04.2008, the Superintending Engineer, Chennai Division of the Highways Department, called for options from persons who have applied for appointment as Junior Assistant on compassionate

grounds, to be appointed as Salai Paniyalar as the recruitment for the said post was under way then. Since the writ petitioner possessed requisite educational qualification to be considered for the post of Junior Assistant, he did not exercise option to be appointed as Salai Paniyalar.

(d) At this stage, to the shock and surprise of the appellant, the first respondent, vide Memo in No.Estt.1(1) 12991/2013, dated 07.05.2013, rejected his application for appointment on compassionate grounds citing Letter No.86/Q1/2010, dated 04.05.2010 of the Labour and Employment Department, on the ground that the application seeking appointment should be submitted within three years from the date of death of the Government servant and further, the date on which the application is submitted, is relevant, and the corresponding age and educational qualifications are also to be taken into account for considering those applications. As application of the writ petitioner was presented only on 22.05.2006, which was beyond the prescribed time limit of three years, it is contrary to the said G.O. Hence, wait list No.585-A assigned to the writ petitioner, was cancelled. Since the writ petitioner was bona-fidely believing that his application would be considered for appointment on compassionate grounds, he did not apply for any other suitable employment.

(e) In those circumstances, the appellant has filed the Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in Memo No.Estt./1(1)/12991/2013, dated 07.05.2013 and Memo No.1272/2013/B2, dated 16.08.2013 of the third respondent, and quash the same, and consequently direct the first respondent to consider and appoint the writ petitioner to the post of Junior Assistant on compassionate grounds with all attendant benefits flowing therefrom.

3. The learned Single Judge, considering the rival pleadings, accepted the submissions of the learned Additional Government Pleader appearing for the respondents 1 to 3 that the application submitted by the appellant is belated and it is contrary to the scheme framed for appointment on compassionate grounds. The learned Single Judge also observed that appointment on compassionate grounds is only a concession and it cannot be considered as a regular recruitment. Accordingly, the learned single Judge dismissed the writ petition filed by the writ petitioner/appellant. Challenging the same, the appellant/writ petitioner had preferred this Writ Appeal.

4. The learned counsel appearing for the appellant/writ petitioner submitted that the appellant's father was working as Salai Paniyalar. He was a regular Government employee in the

Highways Department and died in harness in 1988. Since the appellant was minor at the time of his father's death, he submitted his application only in the year 1995, which was rejected on the ground that it was not submitted within three years from the date of the death of his father. In this regard, the learned counsel appearing for the appellant/writ petitioner submitted that as per G.O.(Ms).No.120, Labour and Employment Department, dated 26.06.1995, the application for appointment on compassionate grounds, should be made within three years from the date of death of the Government servant. But the said G.O. (Ms).No.120 is not applicable to the case of the writ petitioner, as the appellant's father died on 11.11.1988. In this regard, the Government of Tamil Nadu issued a clarificatory letter dated 11.10.1995 to the said G.O.(Ms).No.120 clarifying that the time limit of three years specified in the said G.O. is applicable only to the dependants of the Government servants who died while in service on or after 26.06.1995 and the said G.O. is not applicable to the past cases. In the instant case, the writ petitioner's father died in the year 1988, much earlier to the issuance of the said G.O.(Ms).No.120.

5. The learned counsel appearing for the appellant/writ petitioner further submitted that, again, an application was submitted by the writ petitioner on 22.05.2006, which after due consideration and scrutiny, was registered and waiting list in No.585-A was assigned by the second respondent, vide Memo dated 26.09.2006. By Letter dated 11.04.2008, the Superintending Engineer, Chennai Division called for options from persons who have applied for appointment as Junior Assistant on compassionate grounds, to be appointed as Salai Paniyalar. Since the writ petitioner possessed requisite educational qualifications to be considered for the post of Junior Assistant, he did not exercise the said option to be appointed as Salai Paniyalar. While so, by the impugned order, the first respondent rejected the application of the writ petitioner.

6. In the above context, the learned counsel appearing for the appellant/writ petitioner submitted that having registered the application of the writ petitioner and assigned the waiting list number, the respondents cannot turn around and say that the writ petitioner's application was not received within three years from the date of death of his father. The fact remains that the said G.O.(Ms).No.120 is not applicable to the case of the writ petitioner, as his father died much earlier to the passing of the said G.O., by which the said three years' period was brought in. Without considering these aspects, the learned Single Judge dismissed the Writ Petition and thus, he prayed for allowing the present Writ Appeal.

7. Countering the above submissions, the learned Special Government Pleader appearing for the respondents submitted that though the clarificatory letter issued to the said G.O. will not apply to the legal heirs of the deceased who are seeking compassionate appointment and who had died prior to 26.06.1995 being the date of the said G.O., subsequently, the Labour and Employment Department of the Government of Tamil Nadu, had also issued another letter in Letter (Ms) No.202, dated 08.10.2007, wherein it was stated that the Government servants including those who died prior to 26.06.1995, had to give an application under the scheme within three years. The learned Special Government Pleader appearing for the respondents further contended that the Government had also issued a comprehensive G.O. in G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, issuing certain guidelines regarding compassionate appointment, pursuant to the judgments of this Court, in which all the Government Orders relating to the compassionate appointment under the scheme, the age limit, the period prescribed for making an application and also the persons who are eligible under the compassionate appointment, were discussed and guidelines were issued thereunder. If the case of the writ petitioner is applied in the light of the guidelines issued in G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020. the writ petitioner is not entitled for appointment on compassionate grounds. Therefore also, it is incorrect to state that the three-year time limit is not applicable to the case of the appellant/writ petitioner.

8. It is also submitted by the learned Special Government Pleader appearing for the respondents that the writ petitioner, cannot, as a matter of right, insist that he should be offered the post of Junior Assistant. When he was offered the post of Salai Paniyalar, he has not chosen to accept it. Further, the writ petitioner's family was not under indigent circumstances and they could survive all these years without an appointment on compassionate grounds. The appellant/writ petitioner made his first application after the death of his father nearly after seven years of his father's death and the second application was submitted after 18 years. At that time also, the writ petitioner/appellant only insisted for the post he aspired to. Thus, according to the learned Special Government Pleader, there is inordinate delay on the part of the writ petitioner/appellant in making application for compassionate appointment. Under such circumstances, there is no infirmity or irregularity in the order passed by the learned Single Judge and she prayed for dismissal of the Writ Appeal.

9. Keeping the submissions made on either side, we have carefully perused the materials available on record.

10. Irrespective of the submissions made on either side, we find that the writ petitioner's second application dated 22.05.2006 was entertained by the respondents and he was assigned with waiting list No.585-A. This was not disputed by the appellants. The appellant legitimately expected that he will be given an appointment under compassionate grounds when his second application was entertained and a waiting list number was allotted. Having accepted the second application of the appellant/writ petitioner and assigned waiting list number, the appellants, instead of appointing the appellant/writ petitioner as Junior Assistant have also explored the possibility of accommodating and/or offering the post of Salai Paniyalar to the appellant/writ petitioner. While so, it is not now open to the respondents to turn around and say that the appellant had submitted his application belatedly.

11. Further, the second application of the appellant was made when he was 35 years and now he is aged 47 years. The learned Special Government Pleader appearing for the respondents submitted that though the appellant was offered the post of Salai Paniyalar, he has not chosen to exercise such option, and hence, he is not entitled for compassionate appointment. But that was not the reason assigned for rejecting his application. The reason assigned in the order, which was impugned before the learned single Judge, was that the appellant/writ petitioner submitted his application belatedly, which reason was not assigned when they have chosen to entertain his second application and allot waiting list number.

12. Therefore, we are of the considered opinion that absolutely, there is no legal impediment for the respondents to consider the application of the appellant/writ petitioner for compassionate appointment, on merits, without reference to the period of three years within which time the application ought to have been submitted the application seeking appointment on compassionate grounds.

13. Accordingly, the impugned order passed by the learned Single Judge is set aside. The Writ Appeal is allowed. Consequently, we direct the respondents to consider the application of the appellant/writ petitioner seeking compassionate appointment to the post of Junior Assistant and pass appropriate orders.

14. Though the learned counsel for the appellant/writ petitioner submitted that now the present age of the writ petitioner is 47 years, we are of the opinion that the same cannot be put against him. The appellant/writ petitioner is not in any manner responsible for the delay caused by the respondents in considering his application. In such

circumstances, the respondents are directed to pass appropriate orders as directed above, within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Director General,  
The State of Tamil Nadu,  
Highways Department,  
PWD Complex, Kamarajar Salai,  
Chepauk, Chennai-600 005.
2. Chief Engineer (Construction and Maintenance),  
Highways Department,  
PWD Complex, Kamarajar Salai,  
Chepauk, Chennai-600 005.
3. The Divisional Engineer,  
Highways Department,  
Building and Maintenance Office,  
Tiruvannamalai-606 601.

+1cc to Mr.Menon, Advocate SR.4099

+1cc to the Government Pleader SR.4009

Writ Appeal No.2761 of 2019

NMI (CO)

CB(18/02/2021)

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