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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM :

The Hon'ble Mr. Justice C.SARAVANAN

W.P.No.31311 of 2017

A.Chindamani

... Petitioner

Vs.

1. The General Manager,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600002.
2. The Chairman & Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the respondent No.1, in Ka.No.SEKUVAA/PAMANEE/NEEMA4/7553/2017 dated 21.03.2017 and quash the same and thereby, direct the respondents to grant compassionate appointment as per the petitioner's representation dated 15.03.2017.

For Petitioner : Mr.K.Raja

For Respondents : Mr.R.Kumar

ORDER

(Heard through Video Conferencing)

This Writ Petition has been filed challenging the proceedings of the first respondent in Ka.No.SEKUVAA/PAMANEE/NEEMA4/7553/2017 dated 21.03.2017 and to



quash the same and thereby, direct the respondents to grant appointment on compassionate ground as per the petitioner's representation dated 15.03.2017.

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2. The petitioner has challenged the impugned communication dated 21.03.2017, rejecting her application for appointment on compassionate ground for her son, who was minor at the time of death of his father on 03.10.1994. It is the case of the petitioner that when the petitioner's husband passed away on 03.10.1994, there were no guidelines for the appointment on compassionate ground and therefore, unaware of the subsequent development, the petitioner filed an application for compassionate appointment on 28.07.1998. Thereafter, since there was no response, the petitioner made the representations dated 30.04.2009 and 15.03.2017 and the same was rejected by the impugned order dated 21.03.2017. In the impugned order, the first respondent has rejected the petitioner's application for appointment for her son on compassionate ground by citing G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995, as per which, an application for appointment on compassionate ground should be made within three years from the date of death of the employee.

3. The learned counsel for the petitioner submitted that several persons were appointed arbitrarily who had registered after three years of the death of the deceased employee in a RTI response obtained under the Right to Information Act (for brevity 'RTI Act'). In this connection, the learned counsel has filed a copy of response dated 08.03.2019 obtained by the petitioner under the RTI Act, as per which, several persons who had made applications after the petitioner and also more than three years after the demise of the Government servants, have been granted appointment on compassionate ground. The learned counsel, therefore, submitted that the respondent/Board being a public body, cannot discriminate and cannot impose the content of the G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 arbitrarily against the petitioner. It is submitted that if the petitioner's father had been alive, the petitioner would have got better education and would not have suffered penury and indigence.

4. According to the learned counsel for the respondent, the issue involved in this writ petition is no longer res integra in view of the judgement of the Hon'ble Supreme Court in 'N.C.Santhosh Vs. State of Karnataka reported in (2020) 7 SCC 617. The Hon'ble Supreme Court after reviewing several decisions rendered by it, held that appointment on compassionate



ground offered to, is an exception to the norms. It is further submitted that norms prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a Government employee, in the absence of any vested right accruing on the death of the Government employee, can only demand consideration of his or her application. He is, however, dis-entitled to seek consideration in accordance with the norms as applicable, on the day of the death of the Government employee. Paragraphs 19 & 20 from the said decision are reproduced below:

"19. Applying the law governing compassionate appointment culled out from the abovesaid judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

20. In view of the foregoing opinion, we endorse the Tribunal's view as affirmed [N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 7396] by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments [N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 7396] , [Sayeda Farheen Banoo v. State of Karnataka, 2013 SCC OnLine Kar 6616] , [Santosh v. Revenue Deptt., WP No. 28738 of 2011, order dated 2-12-2011 (Kar)], the appeals are found devoid of merit and the same are dismissed."

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. Admittedly, at the time of the death of the petitioner's husband on 03.10.1994, there was no uniform policy which was adopted by the respondents for appointment on compassionate ground. G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 was passed a few months after the death of the



petitioner's husband. However, that G.O has not been given serious consideration by the respondent/Board in as much as the petitioner has been able to demonstrate that several persons' applications were much later and beyond three years limitation prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 and they have given appointment by the respondents. The respondents cannot discriminate by resorting to pick and choose method in the matter of appointment on compassionate ground also.

7. As a matter of fact, the Government of Tamil Nadu has now issued a revised G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020. In the said G.O also, a three year limitation period has been given for filing an application from the date of death of the Government servant. The intention of the Government of Tamil Nadu is to provide employment on compassionate grounds wherever the family is in indigent circumstances. Though there is hardly any scope to enter indigence as the dependants of the deceased employee are entitled to pension and family pension. Nevertheless, the Government is appointing the dependants of the deceased employees on compassionate grounds, in case, where there is a death of a Government employee while in service.

8. This is a case where the petitioner herself appears to be an uneducated and a semi-literate person. It is not expected for an uneducated homemaker to be aware of the Government orders, which are released from time to time, by the Government. Considering the fact that the petitioner's son was a minor at the time of the death of his father and also the fact that there was no other guideline which was uniformly being applied at the time of the death of the petitioner's husband, this Court is inclined to direct the respondent/Board to consider the petitioner's application for appointment on compassionate ground of her son, favourably by overlooking the three year limitation prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995. The respondent/Board may also consider the fact that several other persons who had applied after the petitioner's application were appointed after the limitation period of three years prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 had expired and by relaxing the same by applying G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020 which is currently prevailing for employment on compassionate grounds. The respondent/Board shall dispose of the application of the petitioner favourably, within a period of six weeks from the date of receipt of a copy of this order provided the petitioner satisfies the other criteria for appointment on compassionate ground.



9. With the above directions, this Writ Petition stands disposed of. No costs.

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Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The General Manager,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600002.
2. The Chairman & Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600002.

+1cc to Mr.K.Raja, Advocate, S.R.No.43155

W.P.No.31311 of 2017

SV-I (CO)
SU (20/09/2021)