



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]No.955 of 2021

and

C.M.P. [MD]No.4308 of 2021

WEB COPY

1.The Chief Director,
Highways Department,
Chepauk, Chennai - 5.

2.The Divisional Engineer (Highways),
Construction and Maintenance,
Pudukottai - 2.
Pudukottai District.

: Appellants

Vs.

A.Sasika

: Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 12.11.2019, in W.P.[MD]No.5375 of 2016 and allow the writ appeal.

Prayer in WP(MD). 5375/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the respondent in his proceedings in Me.Ku.No.3590/2008/A1 dated 07.07.2015 and quash the same and further direct the respondent to give compassionate appointment to the petitioner.

For Appellants : Mr.R.Baskaran,
Standing Counsel for Government

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.R.Baskaran, learned Standing Counsel for Government appearing for the appellants.

3.This appeal filed by the Chief Director, Highways Department and the Divisional Engineer (Highways), Construction and Maintenance, Pudukottai, is directed against the order dated 12.11.2019, in W.P.[MD]No.5375 of 2016, filed by the respondent

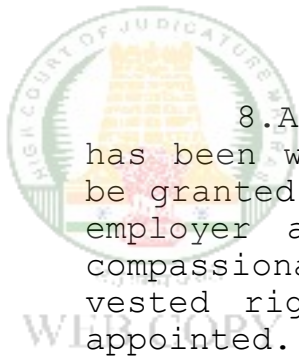


4.The said writ petition was filed to quash the order passed by the appellant department dated 07.07.2015, rejecting the application filed by the respondent / writ petitioner for grant of appointment on compassionate ground, by stating that the application has been filed beyond the period of three [3] years and also distinguishing certain decisions which were relied on by the respondent / writ petitioner.

5.After elaborately hearing Mr.R.Baskaran, learned Standing Counsel for Government, we are of the view that the legal position as pointed out by the learned Government Counsel is correct in the sense that an applicant for grant of appointment on compassionate ground cannot make such an application after attaining majority when the applicant was a minor when the employee die. This principle has been brought out in several decisions and reference to the judgment of the Hon'ble Division Bench in **W.A.[MD]No.187 of 2020 dated 08.07.2020**, in the case of the **District Collector, Madurai District and another Vs. A.Baby**, can be made applicable.

6.However, one distinguishing feature which we find in the instant case cannot be lost sight of. This is because, the writ petition filed by the respondent / writ petitioner is the second round of litigation. Earlier, more or less for the same reasons, the application filed by the respondent for grant of compassionate appointment was rejected by order dated 19.10.2009. The said order was put to challenge in W.P.[MD]No.5720 of 2020. The writ petition was allowed by order dated 17.01.2013, assigning reasons and referring to certain decision of the Hon'ble Division Bench and ultimately, the order dated 19.10.2009 was quashed and more or less a positive direction was granted to the appellant department to grant appointment to the respondent on compassionate ground, by taking into account the date of birth of the appellant as well as the date of attaining majority coupled with the date of submission of the application and to grant appointment to any suitable post as per the qualification.

7.Admittedly, the order and direction issued in the said writ petition dated 17.01.2013 has become final. As a result of which, the said order binds the appellant department. Therefore, it will be too late for the appellant department to now raise a contention based on other decisions that order dated 17.01.2013 in W.P.[MD] No.5720 of 2010 is not sustainable. Such argument made by the appellant department cannot be accepted.



8.As pointed out by us earlier, the legal position as of now has been well settled that appointment on compassionate ground can be granted only in accordance with the scheme and the policy of the employer and it has been further clarified that appointment on compassionate ground is not a source of recruitment and there is no vested right for an applicant to claim that he / she shall be appointed. This observation is made by us to point out the correct legal position which was in fact advanced before us by the learned Government Counsel. However, the appellant department cannot get over the order dated 17.01.2013 in W.P.[MD]No.5720 of 2010, as the department did not prefer any writ appeal against the said order and the order has become final.

9.For such reasons alone, we are inclined to confirm the order passed in the writ petition. In the result, the Writ Appeal is dismissed and we make it clear that on account of the peculiar facts and circumstances of the case alone, this appeal has been dismissed and this judgment cannot be treated as a precedent. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (cs-I)

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/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1.The Chief Director,
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Chepauk, Chennai - 5.
- 2.The Divisional Engineer (Highways),
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Pudukottai - 2.
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