



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD) No.1312 of 2021

WEB COPY

S.Murugesan

...Petitioner

Vs

1.The District Collector,
Tirunelveli,
Now Bifurcated as Tenkasi District.

2.The Block Development Officer,
Block Development,
Keelapavoor, Tenkasi District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to call for the records relating to the order in Na.Ka.No.153/8718/2018 dated 24.02.2020 of the first respondent herein and quash the same and consequently direct the respondents herein to give appointment to the petitioner herein under the compassionate appointment category.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.S.Dhayalan
Government Advocate

O R D E R

The petitioner's father namely, Shanmugam, while working as a Gang Mazdoor in Keelapavoor Panchayat Union, died in harness on 11.01.2002, he was survived by petitioner herein, who is the son, his wife and two daughters. The petitioner was a minor at the time of demise of his father.

2.The petitioner's mother namely S.Velammal, had filed an application on 22.04.2002 seeking for appointment on compassionate ground. The application was not acted upon for a considerable time and thereafter, the petitioner had also attained majority. In this background, the petitioner's mother gave a representation to the respondents on 11.06.2009 seeking for appointment in favour of her son, who has now become major. By an order dated 25.06.2009, her claim was rejected on the ground that the request was made after seven years from the date of death of the employee. Since the petitioner was of the view that his mother's original representation dated 22.04.2002 which was within three years was not taken into consideration by the respondent, he had filed a writ petition in W.P (MD) No.14606 of 2010 and by an order dated 05.07.2013, it was held



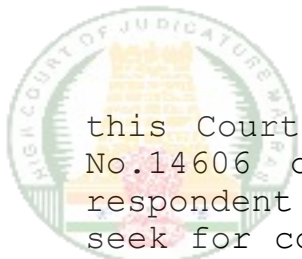
mentioned in the impugned orders dated 25.06.2009 and 15.10.2010. But the first respondent, once again rejected the claim of the petitioner stating that the application was filed beyond the period of three years.

5.A perusal of the impugned order shows that the first respondent has passed the impugned order stating that the very same reason which had been stated in the earlier orders. Though this Court has specifically stated that the first respondent has to consider the claim of the petitioner afresh and pass orders, without reference to the reasons mentioned in the impugned orders, the claim of the petitioner has been rejected on the very same ground that the application was made beyond the three years period. Therefore, the reason assigned in the impugned order cannot be sustained and the same is liable to be quashed.

6.In fine, this Writ Petition is allowed and the impugned order dated 03.09.2013 passed in Na.Ka.No.Na3/33811/2013 is quashed. The first respondent is directed to consider the claim of the petitioner afresh and pass appropriate orders, taking note of the objection raised by the learned Additional Advocate General, within a period of three months from the date of receipt of a copy of this order, without assigning the very same reason stated in the earlier impugned orders as well as in the present impugned order. No costs.

5.Again there was a no compliance of the order of this Court and hence, the petitioner had filed a contempt petition in Cont P (MD)No.1643 of 2019, which is still pending before this Court. After the contempt petition was filed, the first respondent herein had once again rejected the petitioner's claim for compassionate appointment through the impugned proceeding dated 24.02.2020, wherein, the same reasoning was made in a different manner. According to the reasoning adduced in the impugned order, the first respondent was of the view that when two major daughters were entitled to claim compassionate appointment, the petitioner's mother had belatedly sought for compassionate appointment in favour of her son, after about six years. Such a reason is no way different from the earlier reasons adduced by the respondents on 25.06.2009 and 03.09.2013.

6.It is rather unfortunate that inspite of specific orders of this Court, the first respondent had been consistently disobeying the orders in one way or other and rejecting the petitioner's claim only on the ground that the petitioner was a minor at the relevant point of time. Apparently, such a ground is not tenable, since



this Court had given positive directions in its orders in W.P(MD) No.14606 of 2010 and W.P(MD) No.1634 of 2016. If the first respondent was of the view that the petitioner is not entitled to seek for compassionate appointment, the only option available to him would have been to challenge such orders, which exercise, has admittedly not been done in the present case. While that being so, the first respondent has no other option, except to comply with the orders and ought not to have rejected the claim on the basis that the petitioner was minor at the time of death of his father.

7.Since the petitioner has already approached this Court on two earlier occasions and favourable orders were passed and both the orders have become futile in view of the conduct of the first respondent in refusing to comply with the High Court's order, no useful purpose would be served by remanding back the matter once again to the first respondent for fresh consideration and consequently, it would be appropriate to direct the first respondent to issue an appointment order to the petitioner.

8.It would be pertinent to further observe that the petitioner's family still seems to be in indigent and distressed circumstances. The petitioner herein had produced a copy of the certificate issued by the Tashildar, Tenkasi, evidencing that the family of the petitioner is in a distressed circumstances and below the poverty line. The petitioner herein is the only male member of the late employee and therefore, his family has been struggling to obtain an order of appointment on compassionate grounds, for the past almost 19 years. This Court has taken into account the serious prejudice that could have been caused to the family over these years.

9.In the light of the above observations, the impugned order passed by the first respondent in Na.Ka.No.A3/8718/2018, dated 24.02.2020, is quashed and consequently, there shall be a direction to the first respondent herein to issue an appropriate appointment order to the petitioner herein, on compassionate ground, in any of the department under the first respondent herein, at least, within a period of twelve weeks from the date of receipt of a copy of this order.

10.This Writ Petition stands allowed accordingly. No costs.

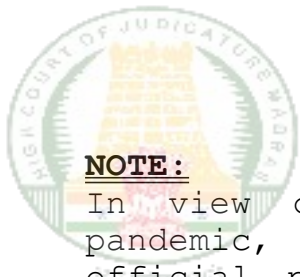
Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /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 District Collector,
Tirunelveli,
Now Bifurcated as Tenkasi District.

2.The Block Development Officer,
Block Development,
Keelapavoor, Tenkasi District.

+1 CC to M/s.T.PON RAMKUMAR, Advocate (SR-10499[F] dated 11/03/2021

+1 CC to M/s.SPL GP (SR-10901[F] dated 12/03/2021)

Order made in
W.P. (MD) No.1312 of 2021
11.03.2021

RK (21.04.2021) 5P 5C

—