



WEB COPY

W.A.(MD)No.749 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2021

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

AND

The HON'BLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No. 749 of 2020

and C.M.P(MD) .No. 4322 of 2020

(Through Video Conference)

1. The Director General,
Highways Department,
Guindy, Chennai - 25.
2. The Superintending Engineer,
Highways Department,
Madurai Circle, Madurai District.
3. The Divisional Engineer,
Highways Department, Ramanathapuram,
Ramanathapuram District.
4. The Assistant Divisional Engineer,
Highways Department, Ramanathapuram,
Ramanathapuram District. ... Appellants/Respondents

Vs.

R. Nagaraj ... Respondent/Petitioner

PRAYER: Appeal under Clause 15 of the Letters Patent, against the order dated 28.02.2020, passed in W.P.(MD) No. 1186 of 2020.

Prayer in WP(MD). 1186/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Directing the 1st Respondent to consider the representation of the petitioners representation dated 19-07-2019 in the light of the earlier representation of the petitioners mother dated 28-08-2009 for appointment of the petitioner on compassionate ground either as officer Watchman or as Sweeper, within the period that may be stipulated by this Honourable Court.

For Appellants	: Mr.A.K. Manickam Standing Counsel for Government
For Respondent	: Mr.K.Ponnaiah, for M/s.Ajmal Associates



J U D G M E N T

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

We have heard Mr.A.K.Manickam, learned standing counsel appearing on behalf of the appellants and Mr.K.Ponniah, learned counsel appearing for the respondent/writ petitioner.

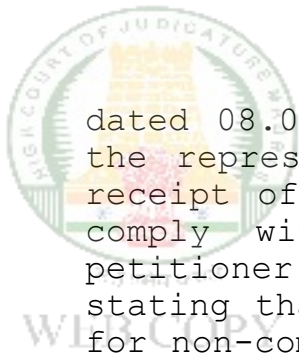
2. This Writ Appeal filed by the Director General, Highways Department and three others is directed against the order, dated 28.02.2020 in W.P.(MD) No.1186 of 2020. The said writ petition was filed by the respondent herein praying for issuance of a Writ of Mandamus to direct the the appellants to consider his representation, dated 19.07.2019 in the light of the earlier representation given by his mother, dated 28.08.2009 for appointment of the respondent herein on compassionate ground either as Office Watchman or Sweeper, within a stipulated time.

3. The learned Single Judge of this Court taking note of an order passed in **W.P. (MD) No.26343 of 2012, dated 23.11.2016** in the case of **M.Sathish Kumar Vs. the Director of School Education and Others**, as well as noting the facts of the case allowed the writ petition and issued a direction to the appellants to issue an appointment order to the first respondent on compassionate ground to the post which may be proportionate to his qualification and also fixed the time frame within which such appointment order should be issued. The Department is aggrieved by the said order and they are on Appeal before us.

4. The learned standing counsel for the appellants contended that the prayer sought for in the writ petition is not maintainable and the writ petition was liable to be dismissed as the respondent/writ petitioner has not challenged the order passed by the 3rd appellant, dated 06.05.2019 and the prayer sought for is only for a Writ of Mandamus.

5. We have heard Mr.K.Ponniah, learned counsel appearing for the petitioner on the above submission.

6. To fix the correctness of the said submission, we have carefully perused the grounds raised by the writ petitioner in the affidavit filed in support of the writ petition. From the said averments, we find that the writ petitioner had earlier filed W.P. (MD) No.1946 of 2019 praying for issuance of a Writ of Mandamus to consider him for appointment on compassionate ground in the entry level post either as Office Watchman or Sweeper in the light of the letter of the 4th appellant, dated 18.09.2018 by considering his representation. The said writ petition was disposed of by order,

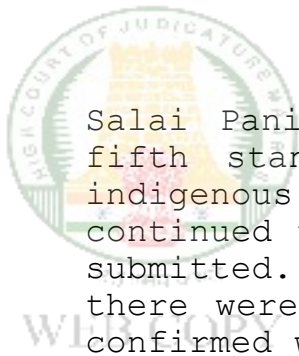


dated 08.02.2019 by directing the Appellant Department to consider the representation within a period of six weeks from the date of receipt of a copy of the order. The Appellant Department did not comply with the direction and therefore, the respondent/writ petitioner sent a legal notice dated 12.06.2019 to the 1st appellant stating that he is contemplating of initiating contempt proceedings for non-compliance of the order and direction issued by this Court. Immediately thereafter, the respondent was communicated with the order dated 06.05.2018 stated to have been passed by the 3rd appellant. It may be true that the prayer sought for in the writ petition is only for the issuance of a Writ of Mandamus. Nevertheless, the correctness of the stand taken by the 3rd appellant in the order dated 06.05.2019 has been called in question in the writ petition and grounds have been raised which was considered by the learned Single Bench of this Court.

7. Therefore, we are not inclined to accept the stand taken by the appellants that the writ petition should have been dismissed on the ground that it was only a Writ of Mandamus.

8. The second contention raised by the learned standing counsel for the appellants is that the application submitted by the respondent cannot be considered in accordance with the Scheme formulated by the Government for compassionate appointment in G.O.Ms No.18 Labour and Employment (Q1) Department, dated 23.01.2020 and the Scheme was already in vogue because there is a time limit fixed, namely, three years from the date of demise of the employee and admittedly, the respondent did not submit an application within the said time limit and therefore, the Appellant Department was right in not offering any employment to the respondent on compassionate ground.

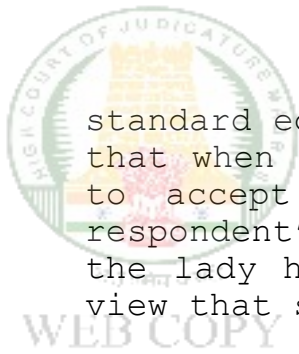
9. We have perused the material papers which were filed in the typed set and we find that on 18.01.2008, the respondent's father passed away and he was aged about 45 years. At the time of his demise, he was working as a 'Gang Coolie / Salai Paniyalar'. The respondent's father died leaving behind his mother Tmt.Jothi, his younger brother Balamurugan and his younger sister Kaleeswari and himself as the four legal heirs. The petitioner's mother had filed the representation on 28.08.2009 wherein she made a request that she may be granted an appointment on compassionate ground or else such appointment may be granted to her son/ respondent herein. This application was not forwarded to the Authorities and by proceedings dated 11.02.2010, the 2nd appellant by proceedings dated 11.02.2010 stated that the mother of the respondent having studied only upto fourth standard, cannot be granted an appointment as 'Gang Coolie /



Salai Paniyalar' because the minimum educational qualification is fifth standard. The family appears to have been in a very indigenous circumstances, therefore, the respondent's mother continued to pursue her claim and several representations have been submitted. In the meantime, the petitioner also came to know that there were several vacancies in the Appellant Department which was confirmed with a reply sent under the Right to Information Act dated 20.04.2016. As mentioned in the representation dated 28.08.2009, the respondent's mother kept on reiterating her request for grant of appointment to her son, namely, the respondent herein and there were several representations made from the year 2018 onwards. Since these representations were not considered, the earlier writ petition was filed wherein a direction has been issued and the request was held to be not feasible of consideration because the application for compassionate appointment to the respondent/ son of the deceased employee having not been made within a period of three years, cannot be considered.

10. The learned standing counsel for the appellants as well as the learned counsel for the respondent both referred to G.O.Ms.No.18 Labour and Employment Department, dated 23.01.2020, where comprehensive guidelines have been issued by the Government for appointment on compassionate ground. The salient features of the Scheme has been set out in the said Government order, wherein, it is stated that the employment is to be provided by relaxing the normal procedures of recruitment through employment exchanges to the legal heirs of the Government servants, who dies in harness, leaving his family in indigent circumstances. Further, it is pointed out by the learned counsel for the respondent that in the order of preference of the legal heirs, the son gets the first preference ahead of unmarried daughter and ahead of the wife or husband of the deceased Government employee.

11. The learned standing counsel for the Appellants is right in his submission that no person can claim as a matter of right that he or she should be appointed on compassionate ground, as the Scheme has been devised by the Government to help the needy legal heirs, whose lives are at distress after the Government servant dies in harness. Thus, the underlined test will be to take note of the facts and circumstances of each case. If the representations given by the mother from the year 2016 to 2018 are considered, which is beyond the period of three years, the appellant is justified in stating that they cannot consider. But, however one important fact is that as early as in August 2009, the respondent's mother, who had studied only up to 4th standard had made a request to offer employment to her or to her son. She could not get accommodated as a 'Gang Coolie / Salai Paniyalar' because she did not have fifth



standard educational qualification. The Appellant Department states that when she was offered the post of Sweeper/Watchman, she refused to accept it. We do not find any record to show that the respondent's mother has outrightly rejected the offer. In any event, the lady had to take care of three children, probably was of the view that she is not suitable to the post of Watchman.

12. Thus, considering the hard facts, the learned Writ Court has moulded the relief and took into consideration the conduct of the parties how the first application dated 28.08.2009 being well within a period of three years can be taken into consideration and the respondent can be granted appointment on compassionate ground.

13. In the peculiar facts and circumstances of this case, we are of the considered view that the order and direction issued by the learned Single Bench need not be interfered though we fully agree with the learned standing counsel for the appellants on the legal grounds. Thus, it goes without a saying that this Judgment shall not be treated as a precedent.

14. In the result, this Writ Appeal stands allowed. The appellants are directed to offer an employment to the respondent on compassionate ground in any entry level post, within a period of twelve(12) weeks from the date of receipt of copy of the Judgment. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

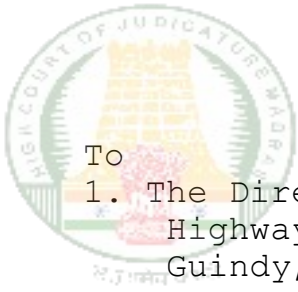
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Sub Assistant Registrar (CS)

ksa / sts

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 Director General,
Highways Department,
Guindy, Chennai - 25.
2. The Superintending Engineer,
Highways Department,
Madurai Circle, Madurai District.
3. The Divisional Engineer,
Highways Department,
Ramanathapuram,
Ramanathapuram District.
4. The Assistant Divisional Engineer,
Highways Department,
Ramanathapuram,
Ramanathapuram District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-18877[F] dated 07/06/2021)

+1 CC to M/s.SPL GP (SR-18969[F] dated 07/06/2021)

Judgment made in
W.A. (MD) No. 749 of 2020

Dated:
03.06.2021

CN(21.06.2021) 6P 7C