



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.23863 of 2018

and

W.M.P. (MD) No.21595 of 2018

P.Mageshwaran

... Petitioner

-VS-

1. The Principal Director
Department of Highways (K(M)P)
Chepauk, Chennai
 2. The Divisional Engineer
Department of highways (K&P) Division
Tirunelveli-2
 3. The Assistant Divisional Engineer
Highways (K(M)P)
Radhapuram, Tirunelveli
- ... Respondents

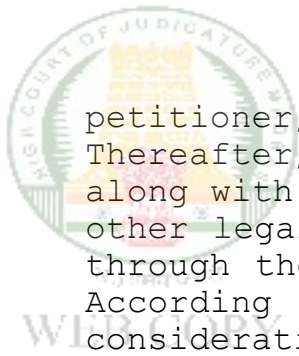
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the impugned order dated 09.07.2018 under reference Na.Ka.No.17/2018/Aa3 passed by the 2nd respondent and quash the same as illegal and devoid of merits and consequently direct the respondents to provide employment to the petitioner under compassionate ground in the department of Highways subject to the petitioner educational qualification forthwith.

For Petitioner : Mr.S.Palani Velayutham
For Respondents : Mr.S.Shanmugavel
Government Counsel

O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order dated 09.07.2018, passed by the second respondent and to direct the respondents to consider the case of the petitioner for appointment on compassionate grounds.

2. The case of the petitioner is that the petitioner's father was working as Salai Paniyalar under the respondents and died on 24.05.2008, while he was in service, leaving behind the



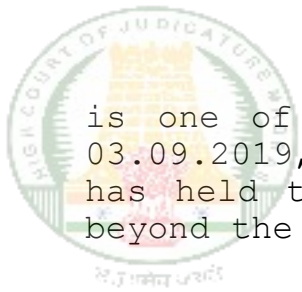
petitioner, his mother, one brother and two sisters as legal heirs. Thereafter, on 22.07.2015, the petitioner submitted application, along with requisite documents and no objection certificate from the other legal heirs of the deceased employee, to the first respondent through the respondents 2 and 3, seeking compassionate appointment. According to the petitioner, while his application was pending consideration, he came to know that on 18.01.2010, his mother submitted application to the respondents seeking appointment on compassionate grounds to her. When the respondents verifying the genuineness of the transfer certificate produced by the petitioner's mother, it was found to be not genuine and therefore, her application was rejected. Further, according to the petitioner, since his application was pending for a long period, he sent a representation to the Chief Minister Grievance Cell on 19.06.2018, which was forwarded to the second respondent. However, the second respondent rejected the petitioner's application for compassionate appointment, by order dated 09.07.2018, on the grounds that application was not submitted within the prescribed period of three years and the earlier application submitted by the petitioner's mother was rejected for not possessing requisite educational qualification and production of fake certificate. Challenging the same, the petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner submitted that at the time of death of the petitioner's father, the petitioner was eleven years old and therefore, he could not submit application, however, after attaining the majority, he submitted application on 22.07.2015 along with requisite certificates. The learned counsel further submitted that since the petitioner has lost the sole breadwinner of the family and he is suffering a lot without any job and income, his case may be considered for compassionate appointment.

4. The learned Government Counsel appearing for the respondents submitted that as per the Government Order in G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, the time limit to prefer application for compassionate appointment is three years from the date of death of the employee. But, the petitioner herein submitted application after a lapse of nearly seven years and hence, the second respondent has rightly rejected the petitioner's application for compassionate appointment.

5. I have anxiously considered the rival submissions of the learned counsel for the parties and perused the materials placed on record.

6. Identical issue came up before the Honourable Division Bench of this Court in W.A.No.1749 of 2019 (***Sudhanthira Devi vs. The State of Tamil Nadu and others***) [in the said Judgment, myself (DKKJ)



is one of the member] and the Division Bench, by Judgment dated 03.09.2019, following the decisions of the Honourable Supreme Court, has held that applications for compassionate appointment submitted beyond the period of three years cannot be entertained.

7. In *Government of India and another v. P.Venkatesh* [(2019) 15 SCC 613], the Honourable Supreme Court has held as follows:

"8. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9-8- 2016, nearly twenty one years had elapsed since the date of the death of the employee.

9. ...

10. Bearing in mind the above principles, this Court held: (*Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138) SCC pp.141-42, para 6)

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

8. The Honourable Full Bench in Paragraph No.13 of the Judgment dated 11.03.2020 in W.P.(MD) No.7016 of 2011 has held as follows:

"13. In the light of the above we find that the judgment in the case of *A.Kamatchi v. The Chairman, Tamil Nadu Electricity Board*, (2013) 2 CWC 758 is not only contrary to the law laid down



in the case of *E.Ramasamy v. The Chairman, Tamil Nadu Electricity Board*, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

9. Furthermore, G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, has clearly prescribed the time limit to prefer application for compassionate appointment as three years from the date of death of the Government servants.

10. In the case on hand, admittedly, the petitioner's father died on 24.05.2008 and the petitioner submitted application for compassionate appointment only on 22.07.2015, nearly after seven years. Therefore, in view of the above settled legal position, the claim of the petitioner made beyond the prescribed period of three years cannot be entertained and it deserves to be rejected. Accordingly, the impugned order does not warrant any interference of this Court.

11. In fine, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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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.



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Chepauk, Chennai
2. The Divisional Engineer
Department of highways (K&P) Division
Tirunelveli-2
3. The Assistant Divisional Engineer
Highways (K(M)P)
Radhapuram, Tirunelveli

+1 CC to M/s.SPL GP (SR-25890[F] dated 11/08/2021)

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