



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.24630 of 2018

and

WMP (MD) .No.22342 of 2018

V. Subbiah

... Petitioner

-vs-

1. The Secretary to Government,
Family Welfare Department,
Secretariat,
Chennai -9.

2. The Director,
Family Welfare Department,
Secretariat,
Chennai -9.

3. The Deputy Director,
Medicine Rural and Family Welfare Department,
Thoothukudi.

... Respondents

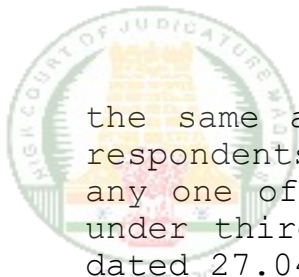
PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by the second respondent vide Na.Ka.O.M. No.48224 Pa.Tho.4/2017/Iru.3, dated 22.01.2018, and consequential order of third respondent in Na.Ka.No.4344/A2/17 dated 3.02.2018 and quash the same as illegal and unconstitutional, consequently direct the respondents to appoint the petitioner under compassionate ground in any one of suitable post according to his educational qualification under third respondent by accepting the petitioner's representation dated 27.04.2017.

For Petitioner : Mr. P. Ramachandran

For Respondents : Mr.A.K. Manikkam
Government Counsel

O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by the second respondent vide Na.Ka.O.M. No.48224 Pa.Tho.4/2017/Iru.3, dated 22.01.2018, and consequential order of third respondent in Na.Ka.No.4344/A2/17 dated 3.02.2018 and quash



the same as illegal and unconstitutional, consequently direct the respondents to appoint the petitioner under compassionate ground in any one of suitable post according to his educational qualification under third respondent by accepting the petitioner's representation dated 27.04.2017.

WEB COPY

2. The case of the petitioner is that his father was working as Driver in the third respondent Department and he died on 20.12.2002 while he was in service, leaving behind the petitioner and his mother as legal heirs. Thereafter, the petitioner's mother submitted representations to the respondents seeking appointment on compassionate grounds. Since the petitioner was minor at that time, all the applications were rejected by the respondents. On 27.04.2017, he submitted another representation, after attaining majority and completing his education. However, the the second respondent rejected the petitioner's request, vide orders dated 22.01.2018 and 03.02.2018, on the ground that application for compassionate appointment was not submitted within the prescribed period of three years from the date of death of the petitioner's father and the petitioner was a minor at the relevant time. Challenging the same, the present writ petition has been filed.

3. The learned Government Counsel appearing for the respondents submitted that it is mandate that while applying for compassionate appointment, the candidate must be a major and possessed requisite education qualification. Furthermore, 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 was minor at the time of death of his father and after attaining majority and completed his education, he submitted application after a lapse of nearly 15 years and hence, the second respondent has rightly rejected the petitioner's application for compassionate appointment.

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

5. 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.

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

<https://hcservices.ecourts.gov.in/hcservices/>



"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."

7. 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."

8. 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.

9. In the case on hand, admittedly, the petitioner's father died on 20.12.2002 and the petitioner, after attaining majority and completing his Bachelors Degree, submitted application for compassionate appointment only on 27.04.2017 nearly after 15 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.

10. In fine, the writ petition fails and it is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mnr

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 Secretary to Government,
Family Welfare Department,
Secretariat,
Chennai -9.
2. The Director,
Family Welfare Department,
Secretariat,
Chennai -9.



3. The Deputy Director,
Medicine Rural and Family Welfare Department,
Thoothukudi.

WEB COPY

+1 CC to M/s.SPL GP (SR-26629[F] dated 18/08/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-26612[F] dated 18/08/2021)

W.P. (MD) No.24630 of 2018

and

WMP (MD) .No.22342 of 2018

16.08.2021

RK (15.09.2021) 5P 6C