



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.17097 of 2016

and

W.M.P.(MD).No.12411 of 2016

Doss Prakash

... Petitioner

Vs.

1.The Managing Director,
State Express Transport Corporation Limited,
Pallavan Salai,
Chennai -2.

2.The General Manager,
State Express Transport Corporation Limited,
Pallavan Salai,
Chennai -2.

3.The General Manager (Transport & Administration),
State Express Transport Corporation Limited,
Pallavan Salai,
Chennai -2.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the orders passed by the 2nd respondent in his proceedings in Memo No. Dip1473/mava2/avipokathanaa/2010, dated 29.07.2010 and the subsequent order passed by the 3rd respondent in his proceedings in Letter No.Dip1473/mava2/avipoka/2010, dated 01.04.2016 and quash the same as illegal and consequently direct the respondents to provide compassionate appointment to the petitioner in the respondent Corporation.

For Petitioner

: M/s.T.A.Ebenezer

For Respondents

: Mr.K.Sathiya Singh
Standing counsel

O R D E R

This writ petition has been filed challenging the order passed by the second respondent, dated 29.07.2010 and the subsequent order
<https://hcservices.ecourts.gov.in/hcservices/>



passed by the third respondent, dated 01.04.2016 and to quash the same and consequently, direct the respondents to provide compassionate appointment to the petitioner in the respondent Corporation.

2. The case of the petitioner is that his father was working as Conductor in the respondent Transport Corporation and died in harness on 15.05.2001, leaving behind the petitioner, wife and his daughter as the legal heirs. At the time of death of the petitioner's father, he was only nine years old. Hence, immediately after attaining majority, the petitioner's mother made an application to the first respondent on 26.06.2010, seeking compassionate appointment to the petitioner. But the same was not considered. Therefore, the petitioner's mother made another application on 06.11.2015, seeking compassionate appointment to her daughter and the same was also rejected on the ground that the application for compassionate appointment was not made within three years from the date of death of the petitioner's father. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that at the time of death of the petitioner's father, the petitioner and his sister were minors and hence, they were not able to secure the job. Immediately after attaining majority, the petitioner's mother has made applications for compassionate appointment to the petitioner and his sister. However, without considering the same, the respondents 2 and 3 have mechanically rejected the same, which is unsustainable one. Hence, he prayed for allowing this writ petition.

4. The learned Standing counsel appearing for the respondents would submit that the application for compassionate appointment should be submitted within a period of three years from the date of death of the deceased employee. But, in the present case, the petitioner's mother has submitted the applications beyond the prescribed period of limitation. In this regard, the learned Standing counsel has relied on a decision of this Court in the case of **S.Saravanakumar vs. P.Marimuthu** reported in **2016(5)CTC 125** and it is relevant to extract the following paragraphs.

"38.Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Post which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in



harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for a reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death."

5. Heard the learned counsel for the petitioner, learned Standing counsel for the respondents and perused the materials available on record.

6. The facts in the present case are not in dispute. On the date of death of the employee, the petitioner and his sister were minors. Therefore, after attaining majority, the petitioner's mother has filed the applications for compassionate appointment to the petitioner and his sister and the same were rejected on the ground of delay.

7. The purpose of providing employment on compassionate basis is to mitigate the hardship of the family which has arisen due to the death of the employee and such appointment therefore has to be provided immediately to ensure that the family tide over the sudden crisis which has arisen due to the death of the employee. If the compassionate appointment is treated as one more source of recruitment, then it will be violative of Article 16 of the Constitution of India. It is settled by various decisions of the Hon'ble Supreme Court, an appointment on compassionate basis is a concession given by the employer to help the family of the deceased who has died in harness to get over the immediate financial crisis. The scheme under which compassionate appointment can be given has to be construed strictly.

8. As already pointed out by the learned Standing counsel that the very same issue was already decided by this Court in the case of **S.Saravanakumar vs. P.Marimuthu** reported in **2016(5)CTC 125** and in paragraph Nos.38 and 39, this Court has clearly held that no minor can be appointed to any post in service and no post can be kept vacant for the particular person till he attains majority and the said vacant has to be filled up, as per the recruitment rules.



9. In view of the categorical decision cited supra, there is no merit in this writ petition and it deserves dismissal and accordingly, the Writ Petition is dismissed. However, in the circumstances of the case, there will be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

AKV

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 Managing Director,
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- 3.The General Manager (Transport & Administration),
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+1 CC to Mr.K.SATHIYA SINGH, Advocate (SR-3407[F] dated 04/02/2021)

Order made in
Writ Petition (MD)No.17097 of 2016 and
W.M.P. (MD) .No.12411 of 2016
04.02.2021

SGS (CO)
SRS (09/03/2021) 4P : 5C