



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD)No.25300 of 2018

and

W.M.P. (MD)Nos.22909 to 22911 of 2018

E.Karthikeyan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Dean,
Thanjavur Medical College Hospital,
Thanjavur.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order in Na.Ka.No.97289-2/Ni-2/2017, dated 09.01.2018 passed by the second respondent and the consequent order in Na.Ka.No.1356/Ni.2/2008, dated 31.01.2018 passed by the third respondent and quash the same and consequently, direct the respondents to grant regular appointment to the petitioner, on the basis of the petitioner's qualification under compassionate grounds in the 2nd respondent department within a time limit to be fixed by this Court.

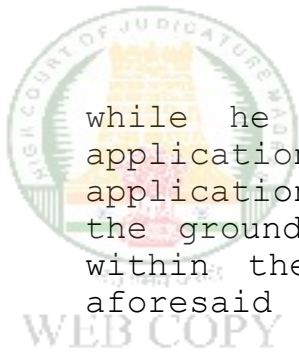
For Petitioner : Mr.A.Thirumurthy

For Respondents : Mr.S.Shanmugavel,
Standing Counsel for State

ORDER

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order dated 09.01.2018, passed by the second respondent and the consequential order dated 31.01.2018 passed by the third respondent and to direct the respondents to grant regular appointment to the petitioner, on the basis of the petitioner's qualification under compassionate grounds in the 2nd respondent department .

2. The petitioner's father Elangovan died on 31.01.2002,
<https://hcservices.ecourts.gov.in/hcservices/>



while he was in service. The writ petitioner submitted his application on 04.02.2008 for compassionate appointment. The said application was rejected by the second respondent on 09.01.2018, on the ground that the petitioner has not submitted the application within the prescribed period of three years. Challenging the aforesaid order, the writ petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner submitted that the Government has issued a ban order on direct recruitment and therefore, the petitioner has not submitted the application within the prescribed period of three years. The said ban order was lifted by the Government vide G.O.Ms.No.16 P&AR Department, dated 21.02.2006 and after the said ban order was lifted by the Government, the petitioner submitted an application on 04.02.2008. Therefore, according to the petitioner, the said application is within the time and hence, prays for allowing the Writ Petition.

4. The learned Standing Counsel for State appearing for the respondents submitted that the petitioner has not submitted his application within three years and therefore, in the light of the law settled by the Hon'ble Supreme Court as well as this Court, the respondent has rightly rejected his claim and further the father of the petitioner died in the year 2002 and therefore, after the laps of 19 years, the petitioner is not entitled to get any relief at this stage.

5. I have anxiously considered the rival submissions and perused the materials available on record.

6. The dispute arose on the present case is that the petitioner has submitted an application on 04.02.2008, seeking for compassionate appointment, after the ban order was lifted by the Government vide G.O.Ms.No.16 P&AR Department, dated 21.02.2006 and therefore, according to the petitioner, the said application is submitted within the prescribed period of three years.

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."

WEB COPY

8. 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."

9. In the case on hand, the petitioner's father died on 31.01.2002 and after the ban order was lifted by the Government vide G.O.Ms.No.16 P&AR Department, dated 21.02.2006 , the petitioner has submitted an application on 04.02.2008 for compassionate appointment. However, 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, this Writ Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

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 Principal Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Dean,
Thanjavur Medical College Hospital,
Thanjavur.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-26121[F] dated 12/08/2021)

+1 CC to M/s.GP (SR-26248[F] dated 13/08/2021)

W.P (MD) No.25300 of 2018
12.08.2021

RD(23.08.2021) 4P 6C