



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.(MD)No.6159 of 2016

and

W.M.P.(MD)No.5440 of 2016

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V.Poongavanam

... Petitioner

versus

The Deputy Commissioner cum
Commissioner (full in-charge)
Madurai Corporation,
Madurai.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the records pertaining to the impugned order passed by the respondent herein in his proceedings Ma.Ni.9/014038/2013 dated 05.02.2016 and quash the same as illegal and consequently, direct the respondent herein to appoint the petitioner in any suitable post on the basis of the application submitted by the petitioner within the time stipulated by this Court.

For Petitioner : Mr.C.Gangai Amaran

For Respondent : Mr.T.S.Mohamed Mohideen
Standing Counsel

ORDER

This writ petition has been filed seeking for the issuance of a writ of certiorarified mandamus, to call for the records pertaining to the impugned order passed by the respondent herein in his proceedings Ma.Ni.9/014038/2013 dated 05.02.2016 and quash the same as illegal and consequently, direct the respondent herein to appoint the petitioner in any suitable post on the basis of the application submitted by the petitioner within the time to be stipulated by this Court.

2. The petitioner's father, who was working in the respondent Corporation as Sweeper, died in harness on 27.04.2009. The petitioner studied up to 5th standard and due to the financial crisis, he could not continue his studies further. Therefore, he submitted an application before the respondent Corporation for



compassionate appointment on 27.09.2012. However, the respondent Corporation, by his proceedings dated 05.02.2016, rejected the application on the ground that it was a belated application. Aggrieved over the same, the petitioner has filed the present writ petition.

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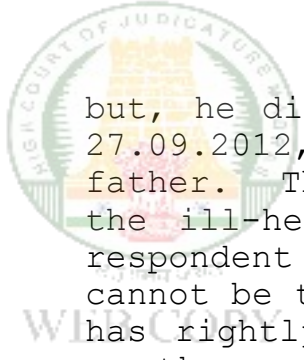
3. The learned counsel appearing for the petitioner submitted that since the petitioner's father worked as a Sweeper, the petitioner also submitted the application for compassionate appointment to the post of Sweeper and there is minimum no educational qualification required for that post. Due to the ill-health of his mother, he could not able to submit his application in time, hence, there was a delay of five months. Since the petitioner made an application for the post of Sweeper, the delay of five months will not vitiate the application for compassionate appointment. Further, the petitioner's family is in a penurious condition. Therefore, the respondent Corporation, while considering the application for compassionate appointment, has to consider as to whether the petitioner's family is in a penurious condition, but, without considering the same, rejected the application on the ground of delay. Therefore, he prayed for allowing the writ petition.

4. The learned counsel appearing for the respondent submitted that as per G.O.Ms.No.120, Labour and Employment Department, the application for compassionate appointment should be made within three years from the date of death of a Government Servant. But, in the present case, the petitioner submitted his application after three years from the date of death of his father. Therefore, the said application was rejected on the ground of delay and not on the ground of want of qualification. Therefore, the impugned proceedings does not warrant any interference.

5. Heard both sides and perused the materials available on record.

6. The petitioner's father, who was working as a Sweeper in the respondent Corporation, died on 27.04.2009. But, the petitioner submitted the application for compassionate appointment only on 27.09.2012, i.e. after five months from the date of death of his father.

7. As rightly contended by the learned counsel for the respondent, as per G.O.Ms.No.120, Labour and Employment Department, the application for compassionate appointment should be made within three years from the date of death of a Government servant. Subsequently, the said G.O. was reiterated in G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020, in which, the time limit, for making an application for compassionate appointment, was fixed within three years from the date of death of a Government servant. As per the said G.Os, the petitioner should have submitted his application for compassionate appointment, within three years,



but, he did not do so. But, he submitted his application only on 27.09.2012, i.e. after five months from the date of death of his father. Though it is the contention of the petitioner that due to the ill-health of his mother, he could not able to approach the respondent Corporation and submit his application in time, the same cannot be taken into account. Therefore, the respondent Corporation has rightly rejected the application for compassionate appointment on the ground that it was a belated application. Moreover, the purpose of providing employment on compassionate grounds is to tide over the financial crisis of the deceased family and there must be a proof as to the deceased family is in a penurious condition. In the present case, the petitioner has not produced any document to prove that his family is in a penurious condition.

8. In this regard, the Division Bench of this Court also, in **W.A.No.3899/2019 [P.Poongodi vs. The Chairman]**, held as under:

"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. The dependent of a deceased employee cannot be permitted to convert a tragedy into a bonanza. 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."

9. In the light of the above decision and also considering the fact that the petitioner submitted his application after five months from the date of death of his father and he has also not produced any document to prove that his family is in a penurious condition, the present writ petition is wholly unsustainable in law. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)



To

The Deputy Commissioner cum
Commissioner (full in-charge)
Madurai Corporation,
Madurai.

+1 CC to Mr.T.S.MOHAMED MOHIDEEN, Advocate (SR-4459[F] dated
11/02/2021)

W.P. (MD)No.6159 of 2016
10.02.2021

(NSM)
KV(03.03.2021) 4P 3C