



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.11154 of 2017

and

W.M.P. (MD).No.8557 of 2017

WEB COPY

M.Thetchinamoorthy

... Petitioner

Vs.

The Superintendent of Police,
District Superintendent Office,
Tirunelveli.

... Respondent

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 relating to the impugned order passed by the respondent in his proceedings in Na.Ka.No. A5/059865/2016, dated 12.01.2017 and quash the same as illegal and consequently direct the respondent to consider and appoint the petitioner on the compassionate ground in any of the post in his office.

For Petitioner

: Mr.J.Jeyakumaran

For Respondent

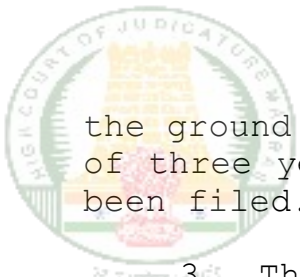
: Mr.A.Karthick

Government Advocate

O R D E R

This writ petition has been filed challenging the impugned order passed by the respondent in his proceedings in Na.Ka.No.A5/059865/2016, dated 12.01.2017 and quash the same and consequently, direct the respondent to consider and appoint the petitioner on compassionate ground in any of the post in his office.

2. The case of the petitioner is that his father was working as a Police Constable in the respondent Office and died in harness on 22.02.2005, leaving behind the petitioner, wife, two daughters and his mother as the legal heirs. At the time of death of the petitioner's father, he was only 11 years old. Hence, the petitioner's mother made a representation to the respondent seeking compassionate appointment to her daughter in the year 2007. But the same was not considered. Hence, in the year 2012, the petitioner's mother made another representation to the respondent seeking compassionate appointment to the petitioner. Thereafter, on 07.08.2012, the petitioner made a representation to the respondent. But the same was not considered. Again, in the year 2016, the petitioner has made another representation to the respondent. However, the respondent has rejected the petitioner's application on



the ground that he has not approached the respondent within a period of three years. 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 sisters were minors and hence, they were not able to secure the job. Immediately after attaining majority, the petitioner has made the application for compassionate appointment, which was rejected on the ground that he has not approached the respondent within a period of three years. Hence, he prayed for allowing this writ petition.

4. The learned Government Advocate 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 has submitted the application beyond the prescribed period of limitation. In this regard, the learned Government Advocate 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 Government Advocate appearing for the respondent 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 sisters were minors and hence, the application for compassionate appointment was rejected and thereafter, the petitioner has filed another application beyond the prescribed period of limitation.

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 Additional Government Pleader 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

The Superintendent of Police,
District Superintendent Office,
Tirunelveli.

+1 CC to SPL GP (SR-2595[F] dated 01/02/2021)

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29.01.2021

VB (09.03.2021) 4P 3C