



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.15057 of 2017

and

W.M.P. (MD)No.11884 of 2017

R.Selva Sophia

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Water Supply & Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai-600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply & Drainage Board,
No.20, Cave Street, Nagercoil,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in Lr.No.406/Ko.Ka.Pa/Pa/Vu/2017, dated 24.03.2017, quash the same and consequently direct the respondents herein to consider the request of the petitioner for compassionate appointment in any one of the eligible vacancies in the respondent Board.

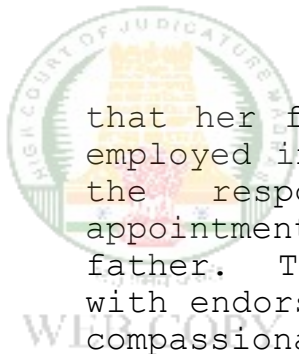
For Petitioner : Mr.Ramsundar Vijayaraj
for M/s. Veera Associates
For Respondents : Mr.K.Muthuramalingam

* * * * *

ORDER

This Writ Petition filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in Lr.No.406/Ko.Ka.Pa/Pa/Vu/2017, dated 24.03.2017, quash the same and consequently direct the respondents herein to consider the request of the petitioner for compassionate appointment in any one of the eligible vacancies in the respondent Board.

2. The case of the petitioner is that the petitioner's father was employed as a Rig Helper and he died due to illness on 31.08.2004, leaving her mother - Ponmani, her brother - R.Moses Aron and herself as his legal heirs. The petitioner would further aver

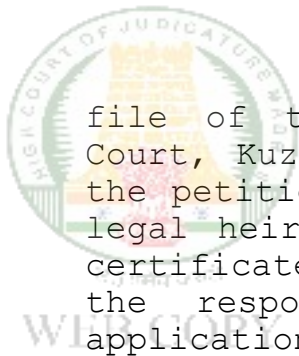


that her father was the sole breadwinner of her family and no one employed in her family. The petitioner's brother gave a request to the respondent Board on 08.04.2006 seeking compassionate appointment, within three years from the date of death of his father. The said application was forwarded to the respondent Board with endorsement by the forwarding authority that he is eligible for compassionate appointment as per the scheme for compassionate appointment. However, the said application was returned by the second respondent, vide proceedings dated 17.05.2006, on the ground that there was a counter claim by another woman as second wife to the petitioner's father. Immediately thereafter, the petitioner's mother filed a succession O.P. No.1 of 2010, on the file of the Subordinate Court, Kuzhithurai and the Subordinate Court, Kuzhithurai passed a final order on 04.07.2012 and declared the petitioner's mother, petitioner's brother and the petitioner as legal heirs of her deceased father.

3. In the meanwhile, the petitioner's brother left the home and is living separately. Considering the indigent circumstances and based on the order passed in the Succession O.P., the petitioner made an application before the respondents on 20.03.2017 along with no objection letter received from her brother and mother. However, the second respondent rejected the said request on 24.03.2017 on the ground that the petitioner has not made the application within three years from the date of death of her father. Challenging the same, the present writ petition is filed by the petitioner.

4. Learned Counsel appearing for the petitioner would submit that though the application made by the petitioner's brother was rejected on the ground that there was a counter claim, by the alleged second wife, however, the said issue was resolved in Succession O.P.No.1 of 2010, vide order dated 04.07.2012. Subsequently, the petitioner's brother was not inclined to proceed with the request made by him and therefore, considering the indigent circumstances faced by the petitioner and her mother, the petitioner decided to make an application in the year 2017, which came to be rejected on the untenable ground, which cannot be sustainable. Hence, the learned Counsel appearing for the petitioner prays for appropriate orders.

5. Per contra, the learned Counsel appearing for the respondents would submit that the petitioner's brother submitted an application, dated 08.04.2006, seeking appointment on compassionate ground. However, the said application was returned by the second respondent vide proceedings dated 17.05.2006 on the ground that there was a counter claim by another woman as second wife to the petitioner's father. Further, the petitioner's brother was instructed to apply for compassionate ground appointment in the prescribed format along with all original certificates. However, the petitioner's brother had not produced the required certificates. Thereafter, the petitioner's mother filed a succession O.P. No.1 of 2010, on the



file of the Subordinate Court, Kuzhithurai and the Subordinate Court, Kuzhithurai passed a final order on 04.07.2012 and declared the petitioner's mother, petitioner's brother and the petitioner as legal heirs of her deceased father. Subsequently, the succession certificate was produced by the petitioner's mother in the office of the respondents and thereafter, the petitioner submitted an application seeking appointment on compassionate ground.

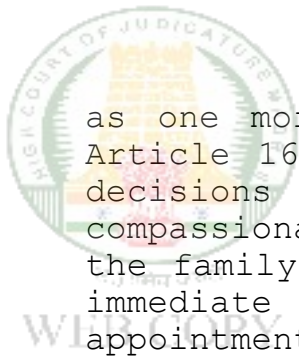
6. The learned Counsel appearing for the respondents would further submit that as per Board's Circular NO.09/F.5126/RS/A3/2009, dated 08.04.2011, an application for appointment on compassionate ground should be submitted within a period of three years from the date of death of the employee and the application received after that period will not be considered as per Government/Board Rules. Therefore, the application submitted by the petitioner, after the prescribed period, was returned.

7. It is further submitted by the learned Counsel appearing for the respondents that even though, the petitioner's family received the succession certificate in their favour on 04.07.2012, the petitioner made an application seeking compassionate ground only on 20.03.2017 and no application was received by the Board in the prescribed format with all original certificates. Hence, the learned Counsel prays for dismissal of the writ petition.

8. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and perused the materials available on record.

9. The facts in the present case are not in dispute. Admittedly, the petitioner's father died in the year 2004 and the petitioner's brother made an application in the year 2006 seeking employment on the compassionate ground, however, the said application was rejected on the ground that the said application was not in the prescribed format and further there was a counter claim made by another woman as second wife to the petitioner's father. Further it is also not in dispute that the Succession O.P., initiated by the petitioner's mother came to be ended in the year 2012, in their favour. Even thereafter, the petitioner has not taken any steps to pursue her application seeking employment on compassionate ground. Further the petitioner made an application in the year 2017, however, there is no proper reasons assigned in the said application for such a long delay.

10. 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



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.

11. In the light of the above, the present petition is wholly unsustainable and, accordingly deserves to be dismissed. Accordingly, this writ petition stands dismissed. However there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

/ /2021
Sub Assistant Registrar

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,
Tamil Nadu Water Supply & Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai-600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply & Drainage Board,
No.20, Cave Street, Nagercoil,
Kanyakumari District.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-1723[F] dated
21/01/2021)

Order made in
WP (MD)No.15057 of 2017 and
WMP (MD) No.11884 of 2017
20.01.2021

SRS/01.02.2021/4P/4C