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WP.No.18245 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.09.2022

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.18245 of 2012

R.Loganathan

... Petitioner

Vs.

1.The Secretary to Government,
Transport Department,
Fort St. George,
Chennai- 9.

2.The Director of Motor Vehicles,
Maintenance Department,
Velacherry,
Chennai- 42.

... 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 relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.A2/11042/2010, dated 04.07.2011 and quash the same and consequently direct the respondents to appoint the petitioner in any one of the post under compassionate ground in the 2nd respondent department.

Page No.1/10



WEB COPY



WP.No.18245 of 2012

For Petitioner : Mr.C.Prakasam
For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

The Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in his proceedings Na.Ka.No.A2/11042/2010, dated 04.07.2011 and quash the same and consequently direct the respondents to appoint the petitioner in any one of the post under compassionate grounds in the second respondent Department.

2. The writ petition is filed by the legal heir, i.e son of the deceased Rathinavel. The petitioner's father was originally employed as Junior Assistant in the second respondent Department and he died due to illness on 25.06.2003.

3. According to the petitioner, as their family was struggling because of the demise of his father, the petitioner's mother made a representation to the respondents and sought appointment on compassionate grounds, but the



respondents informed that due to ban order, the appointment could not be given and hence asked them to wait for sometime for the ban to be lifted. It is submitted that in the year 2006, the ban order was lifted and at that time the petitioner and his younger sister were minors they could not seek compassionate appointment. The petitioner after attaining majority on 10.07.2008 approached the second respondent for compassionate appointment on several occasions and finally submitted a written representation on 13.07.2011, requesting the second respondent to appoint him on compassionate grounds. It is stated by the petitioner that the said representation was rejected on the ground that the application was made beyond a period of 3 years from the date of death of his father. The petitioner further stated that the second respondent passed orders in proceedings dated 27.07.2010 and even after receipt of the said order, the petitioner made further requests to the second respondent. The second respondent finally issued the impugned order dated 04.07.2011 rejecting the petitioner's request for compassionate appointment. The petitioner aggrieved by the same filed the above writ petition challenging the rejection order issued by the second respondent on 04.07.2011.



4. The respondents have filed counter affidavit and submitted that as the petitioner submitted his application with an inordinate delay of 7 years from the date of death of the employee who died on 25.06.2003, his representation was rejected. According to the respondents the representation for compassionate appointment ought to have been filed within 3 years from the date of death of the deceased employee as per G.O.Ms.No.120 of Labour & Employment Department, dated 26.06.2005. The respondents submitted that the compassionate appointment is not a hereditary right and the application submitted on 08.07.2010 with an inordinate delay of 7 years, was rightly rejected. According to the respondents the petitioner was born on 10.07.1989 and he attained majority in the year 2007 and by that time he had completed his 10th Standard, which was the requisite basic qualification for the post of Junior Assistant and hence nothing prevented him from making the application after completion of 10th Standard. The very fact that the representation was made belatedly, made it clear that there was no serious financial crisis in the family. The respondents further submitted that there was no written representation made by the petitioner's mother and there was no substance in the contention that the petitioner's



WP.No.18245 of 2012

representation was revived after the ban on compassionate grounds was lifted as there was no ban on making application. For all the said reasons the respondents prayed for the dismissal of the writ petition.

5. The learned counsel for the petitioner submitted that as the petitioner filed his representation within 3 years from attaining majority, the respondents erred in rejecting the application on the ground of delay. The petitioner's counsel further submitted that the petitioner and his sister are both unemployed and therefore a sympathetic view should be taken in this case.

6. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that in G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, it was clearly stated that the application on compassionate appointment should be made within 3 years of the death of the Government Servant. The present application is filed after 7 years of the death of the Government Servant and therefore, there is enormous delay in approaching the second respondent for compassionate



WP.No.18245 of 2012

appointment and hence the second respondent is justified in rejecting the request for compassionate appointment.

7. I have heard both the counsels and perused the records.

8. It is submitted by the petitioner that he had not applied for compassionate appointment within 3 years from the death of his father for the reason that he was minor at the time of death of his father. In this regard, it is pertinent to refer G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995 and para 2 of the said G.O. reads as follows

2. Simultaneously, the Government also revived the existing orders under the scheme. After careful review the Government issued the following modifications to the scheme.

1. The application for appointment on compassionate grounds should be made within three years of the death of Government servant;

2. The maximum age limit for such appointment be raised to 50 in the case of widows of the deceased Government servants.



9. From a reading of the said G.O., it is clear that the application for compassionate appointment has to be made within 3 years from the date of the death of Government Servant. Admittedly the application is made belatedly, that is, after the period of 7 years from the date of death of the Government Servant, therefore, the impugned order cannot be found fault with. Useful reference can be made at this juncture to the judgment of the Hon'ble Supreme Court in the case of ***Government of India and Another Vs. P.Venkatesh*** reported in ***2019(15)SCC 613***. The relevant para 7 is extracted hereunder;

"7. The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee."



10. It is also pertinent to note here that in the latest judgment dated 30.09.2022 in **Civil Appeal No.6958 of 2022** in the case of **Fertilizers and Chemicals Travancore Ltd. and Others Vs. Anusree K.B.** reported in **2022 SCC Online SC 1331**, the Hon'ble Supreme Court after referring to several judgments held as follows in para 18

"18. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased."

11. Applying the aforesaid principles laid down in the above said judgments to the facts of this case, I find that the application is filed beyond the period of 3 years stipulated in G.O.Ms.No.120, Labour and Employment



WP.No.18245 of 2012

Department, dated 26.06.1995. It is trite law that compassionate appointment is an exception to the general rule of appointment in Public Service and therefore the provisions/ rules of the scheme for compassionate appointment should be strictly complied with. One other reason as rightly contended by the respondents is that the very fact that the petitioner approached the respondents after a long delay of 7 years shows that the family was not in indigent condition.

For all the above reasons, I find no merit in the Writ Petition and the same is dismissed. No costs.

29.09.2022

Speaking Order: Yes/No
dsn



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WP.No.18245 of 2012

N.MALA, J

(dsn)

To

- 1.The Secretary to Government,
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- 2.The Director of Motor Vehicles,
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WP.No.18245 of 2012

29.09.2022

Page No.10/10