



W.P. No.32568 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

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THE HON'BLE MR.JUSTICE **M.S.RAMESH**

W.P. No.32568 of 2015
and M.P. No.1 of 2015

1.D.Amaravathy

2.D.Kannan

.. Petitioners

Vs

1.The Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai 600 009.

2.The Director of Collegiate Education,
College Road,
Chennai 600 006.

3.The Principal,
Bharathi Women's College,
Chennai 600 108.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records in pursuant to the impugned letter issued by the third respondent in Proceedings Na.Ka.No.F/1505/2009 dated 09.10.2009 and the subsequent impugned letter of the first respondent issued in Proceedings Na.Ka.No.51658/B2/2004 dated 18.10.2013 and quash these letters and consequently direct the respondents to consider the



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appointment of the second petitioner in any suitable post on compassionate grounds with all service benefits.

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For Petitioners : Mr.R.Prem Narayan
For Respondents : Mr.Jayaprakash,
Government Advocate
for R1 and 2

No appearance for R3

ORDER

This writ petition has been filed, challenging the impugned Proceedings in Na.Ka.No.F/1505/2009 dated 09.10.2009 issued by the third respondent herein and the subsequent impugned Proceedings in Na.Ka.No.51658/B2/2004 dated 18.10.2013 issued by the first respondent herein and seeking a direction to the respondents to consider the appointment of the second petitioner in any suitable post on compassionate grounds with all service benefits.

2.While the first petitioner is the wife of one late K.Durairaj, who was employed as a Lab Assistant in the third respondent College, the second petitioner is his son. The employee had died, while in service on 29.01.2003. On 05.04.2004, the widow, namely, the first petitioner had made an application seeking for appointment on compassionate



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grounds, which application was not acted upon for quite some time. As on the date of death of the employee, the second petitioner was a minor.

3.It is stated that the second petitioner had attained majority in the year 2009. Since no further action was taken on the first petitioner's original application made in the year 2004, the second petitioner had also made an application on 01.06.2009 seeking for appointment on compassionate grounds. Through the impugned order dated 09.10.2009, the respondents have rejected the second petitioner's request stating that the second petitioner was only 12 years at the time of death of the employee. Since his application dated 01.06.2009 has been made after three years from the date of death of the employee, his request cannot be considered. A similar order came to be passed by the first respondent also on 18.10.2013 reiterating the same stand for the purpose of rejection. Challenging these orders, the present writ petition has been filed.

4.Learned Government Advocate appearing for respondents 1 and 2 submitted that after the first petitioner had made an application, they had sought for certain supporting testimonials from the first



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petitioner for the purpose of considering her candidature for compassionate appointment. He further stated that since the second petitioner was only 12 years at the time of death of his father, his request cannot be considered.

5.The issue relating to the application made by a legal heir, who was minor at the time of death of the employee and subsequently made within three years from the date of his majority, has come up for consideration before this Court, in various decisions, wherein it has been held that such an application made by the legal heir, after attaining majority, would be within time. In the case of *S.Selvamani and another vs. The Additional Chief Secretary to Government, Home Police Department and others passed in W.P. No.2272 of 2019 dated 16.05.2019*, this Court has placed reliance on the decision of the Hon'ble Supreme Court for this proposition. The relevant portion of the order reads as follows:

'9. In identical circumstances, the Hon'ble Apex Court in a decision in the case of **Syed Khadim Hussain V. State of Bihar and others** reported in **2006 (9) SCC 195**, had directed the concerned authorities to consider the application for compassionate appointment. In the said case before the Hon'ble Supreme Court, the widow of



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the deceased employee had made an application for compassionate appointment in the year 1993 which was within time. The application was rejected on the ground that it was not in the prescribed proforma. The applicant's child was a minor, who also made an application in the year 1995 and the same was rejected on the ground that he was a minor. The rejection was challenged upto the Hon'ble Supreme Court, wherein, it was held that though the original rejection of the widow's application was not challenged and the subsequent application was filed much later, it was held that the rejection was made without assigning any reasons and since the child could not have made the application during his minority, directed the authorities to provide compassionate appointment. The observations made therein reads as follows:-

"5. We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application, he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have



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been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.

6.As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The appeal is disposed of in the above terms. No costs."



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12. It would not be out of place to mention here that when the officials attached to the respondents department have been inactive and kept the first petitioner's application dated 28.01.2006 in cold storage for more than 3 years, the same would amount to dereliction of duties of the concerned officers, which requires to be viewed as a serious misconduct. Moreover, when they had passed adverse orders against the first petitioner's genuine and legal request, in view of their negligence and inaction in passing appropriate orders in time, this Court is quite disheartened by the careless manner in which the respondents had handled the rightful claim made by the widow of the deceased employee. The authorities ought to have looked into the plea made by the widow stating that when her husband died, she was left helpless with two minor girl children, aged about 5 and 2 years, without the support of her parents or in-laws. The application was made when she was destitute and since then, she had been knocking the doors of the respondents, only to be slapped with a meaningless and illegal rejection order. Though such a situation deserves for a direction to be issued by this Court to initiate disciplinary action on the erring officials, this Court is consciously refraining itself from doing so, in order to avoid any further delay in the appointment.'



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6.It is stated that the Intra Court Appeal filed by the Department against the aforesaid order in Selvamani's case has been confirmed by the Hon'ble Division Bench in W.A. No.128 of 2020 dated 28.01.2020.

7.The aforesaid extract is self explanatory. In the instant case also, the widow of the employee had made an application on 05.04.2004 within three years from 29.01.2003 when the employee had died. Her application was kept in abeyance for more than six years and ultimately, when the second petitioner had attained majority in the year 2009, he had made application on 01.06.2009 itself.

8.I do not find any justification in the reasoning adopted by the respondents in not accepting the case of the petitioners herein. When the application was made within three years from the date of death of the employee by the first petitioner herein, there was a duty cast on them to consider the application immediately. Hence, by applying the ratio laid down in the aforesaid decisions, the subsequent application made by the second petitioner herein could be said to have been made in time.



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9.It would not be out of place to mention here that very object of the compassionate appointment is to redress the financial situation of a family in distress due to the death of the Government employee. While that being so, keeping the application in pendency indefinitely and then acting upon the the application made by the second petitioner is unjustifiable. Further more rejecting the second petitioner's request and offering to continue with the consideration of the first petitioner's application, after about 6 years, is unacceptable.

10.By applying the ratio laid down in the aforesaid decisions, I am inclined to allow the writ petition. Accordingly, the impugned Proceedings Na.Ka.No.F/1505/2009 and Na.Ka.No.51658/B2/2004 dated 09.10.2009 and 18.10.2013 respectively are quashed. Consequently, there shall be a direction to the first respondent herein to consider the second petitioner's application dated 01.06.2009 seeking for compassionate appointment and pass appropriate orders, appointing the second petitioner to a suitable post, within a period of eight weeks from the date of receipt of a copy of this order. With the



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M.S.RAMESH,J.

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above observation and direction, the writ petition stands allowed.

Consequently, connected M.P. stands closed. No costs.

26.10.2022

Index : Yes
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To

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