



WEB COPY

W.P.(MD)No.19757 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.19757 of 2014

and

M.P. (MD)No.1 of 2014

Neelapathy

... Petitioner

vs.

1.The Secretary to Government,
Home Department, Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Chennai.

3.The Commissioner of Police,
Trichy.

4.The Deputy Commissioner of Police,
Trichy.

... Respondents

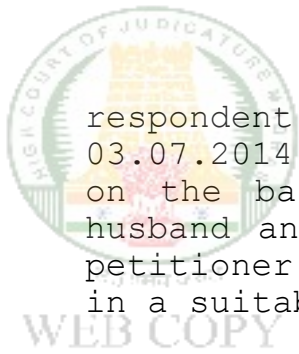
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent in connection with the order passed by him in his proceedings in C.No.50/DC(L&O)TRC/2012, dated 17.01.2012, compulsorily retiring the petitioner's husband and the consequential order passed by the 2nd respondent in his proceedings R.C.No.79114/CA2/2014, dated 03.07.2014 and to quash the same and to reject the petitioner's request for compassionate on the basis of the compulsory retirement order of petitioner's husband and to direct the respondents to consider the case of the petitioner for compassionate appointment and appoint the petitioner in a suitable post.

For Petitioners : M/s.K.R.Shiva Shankari
for Mr.M.Siddharthan

For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed in C.No.50/DC (L&O)TRC/2012, dated 17.01.2012, compulsorily retiring the petitioner's husband and the consequential order passed by the 2nd

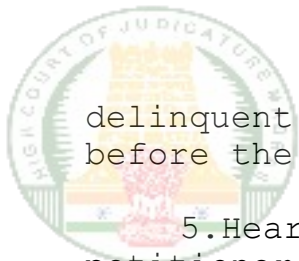


respondent in his proceedings R.C.No.79114/CA2/2014, dated 03.07.2014 and to reject the petitioner's request for compassionate on the basis of the compulsory retirement order of petitioner's husband and to direct the respondents to consider the case of the petitioner for compassionate appointment and appoint the petitioner in a suitable post.

2.The petitioner's husband joined as Armed Reserve Constable in the year 1994. The petitioner's husband was placed under suspension for the allegation that he let off the custody of the remand prisoner, while he was performing the escort duty of a notorious criminal by name Sebastian, who was languishing in jail as remand prisoner at Trichy to Aluva Town in Kerala State. While they were taking rest at lodging house, taking advantage of the tiredness of the petitioner's husband, the criminal escaped from the escort custody. After enquiry, the petitioner's husband was dismissed from service, vide order, dated 21.03.2003. The petitioner preferred an appeal and it was dismissed on 15.02.2007. He challenged the same in W.P. (MD)No.10315 of 2007.

3.The contention of the petitioner is that a delinquent in the same escort duty was dismissed from service and then his punishment was modified into reduction in time scale of pay by two stages for one year without cumulative effect and he was reinstated into service. The petitioner contended because of the dismissal from service, petitioner's husband was stressed and due to the same stress, he died on 06.07.2008. The petitioner has challenged the order passed by the fourth respondent, wherein, the deceased delinquent's punishment was changed from dismissal from service to compulsory retirement and has also challenged the order passed in the application seeking compassionate appointment. The contention of the petitioner is that the co-delinquent's punishment was modified. Therefore, the deceased delinquent's case also ought to be considered and the punishment ought to be reduced. If the same is reduced then, the petitioner would be entitled to compassionate appointment.

4.The respondents have filed a counter affidavit stating that because of the failure in the escort duty, the petitioner was dismissed from service. As per G.O.Ms.No.560, Labour and Employment Department, the legal heirs of compulsory retired persons from service are not eligible for compassionate appointment. Since the petitioner's husband was imposed with the punishment of compulsory retirement, the legal heirs are not entitled to compassionate appointment. The respondents also submitted that while the Writ Petition filed in W.P.(MD)No.10315 of 2007, was pending, the delinquent died and in the present Writ Petition, one of the deceased delinquent legal heir is as a party. In earlier Writ Petition, it was decided that the petitioner ought to have applied for compassionate appointment within three years from the date of death of the deceased delinquent. The date of death of the deceased



delinquent is 06.07.2008 and so the petitioner ought to have applied before the completion of limitation period.

5.Heard M/s.K.Shiva Shankari, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

6.The learned Special Government Pleader vehemently submitted that as per G.O.Ms.No.560, Labour and Employment Department, dated 03.08.1977, the petitioner is not entitled to compassionate appointment, since the said G.O. states that the legal heirs of the deceased delinquent who were in service alone are entitled to the compassionate appointment. In the present case, the deceased delinquent was dismissed from service and hence, the legal heirs are not entitled to compassionate appointment. This Court is not accepting such contention, since subsequently, based on the Court's orders the punishment of dismissal from service was modified as compulsory retirement.

7.As far as the three years limitation period is concerned, the punishment of compulsory retirement was awarded on 17.01.2012. The petitioner has submitted the application on 30.03.2012. Therefore, the respondents are directed to take this application submitted on 30.03.2012 as well within 3 years limitation period. However, it is seen from the records that the petitioner is almost 50 years old and the learned Counsel appearing for the petitioner submitted that the daughter is 19 years old.

8.Therefore, the impugned orders are set aside and the petitioner is directed to submit an alternative application seeking appointment to the petitioner's daughter. The respondents are directed to consider the said application and grant compassionate appointment. The petitioner is directed to submit the application within two weeks from the date of receipt of a copy of this order. Thereafter, the respondents are directed to consider the application and pass orders within 6 weeks. It is made clear that the respondents shall not dismiss the application on the basis of limitation of 3 years.

9.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

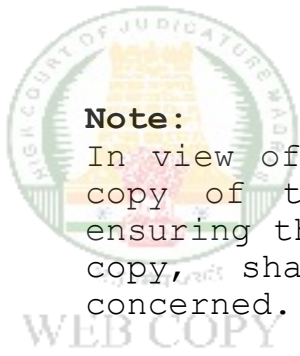
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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 Secretary to Government,
Home Department, Fort St. George,
Chennai - 600 009.

2.The Director General of Police,
Chennai.

3.The Commissioner of Police,
Trichy.

4.The Deputy Commissioner of Police,
Trichy.

+1 CC to M/s.SPL GP (SR-7125[F] dated 18/02/2022)

+1 CC to M/s.V.SUJATHA SIDDHARTHAN, Advocate (SR-7548[F] dated 21/02/2022)

W.P. (MD) No.19757 of 2014
17.02.2022

RK(24/03/2022) 4P 7C