



W.P.(MD)No.16752 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16752 of 2017

S.Rajmohan

... Petitioner

vs.

1.The Director General of Police,
Shevalior Sivaji Ganesan Road,
Chennai-600 004.

2.The State represented by
Superintendent of Police,
Ramanapuram.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the impugned letter No.Na.Ka.No.A4/4787/2017, dated 30.03.2017, issued by the second respondent herein and to quash the same as illegal.

For Petitioner : Mr.C.Sundaravadivel

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader



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ORDER

This writ petition is filed for issuance of a writ of Certiorari, to call for the impugned letter, dated 30.03.2017, issued by the second respondent herein and to quash the same as illegal.

2. The brief facts of the case are that the petitioner's father met with an accident while he was in service and died on 09.08.1987. The legal heirs are petitioner's mother (Kalavathi), the petitioner and his brothers. The petitioner's mother submitted an application for granting compassionate appointment. However, the respondents directed the petitioner's mother to get succession certificate. Hence, the petitioner's mother filed a petition in S.O.P. No. 6 of 1998 on the file of Sub Court, Ramanathapuram. One M/s.Chinnathai filed a petition to implead herself claiming herself as first wife of the deceased employee in the S.O.P. After trial, the learned Sub Court passed a judgment, dated 05.12.1990, holding that except the petitioner's mother, all sons and daughters and the first



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wife of the petitioner's father were declared as legal heirs of the deceased employee. The petitioner's mother preferred an appeal in A.A.O.No.265 of 1991, before the Madras High Court.

3. Pending the appeal, a compromise was reached between the petitioner's mother and the first wife, wherein it was agreed that the petitioner's mother is entitled to retirement benefits of the deceased employee. Pursuant to the compromise, in A.A.O.No.265 of 1991, the Court directed the respondents therein to pay the retirement benefits to the petitioner's mother. The petitioner's mother submitted a representation to the respondents to consider the petitioner for compassionate appointment, as the petitioner's mother had crossed the age of 30. Thereafter, the petitioner submitted a representation on 11.08.2010 to consider the petitioner for appointment on compassionate grounds on 15.12.2010. The petitioner's brothers and sisters had submitted no objection to appoint the petitioner on compassionate ground. The respondents, vide order, dated



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30.03.2017, rejected the request of the petitioner on the ground that as per G.O.No.34 Labour and Welfare Department dated 16.04.2002, the petitioner's request cannot be considered, since the petitioner's mother was second wife of the deceased employee. They may be entitled to DCRG and other benefits except pension and compassionate appointment.

4.The contention of the petitioner is that the petitioner's mother and her children were declared as legal heirs of the deceased employee in A.A.O.No.265 of 1991, vide judgment, dated 21.03.1997. In the terms of compromise, wherein it has been agreed that the petitioner's mother is entitled to compassionate appointment and the respondent therein M/s.Chinnathai has no objection to declare the appellants therein as legal heirs of the deceased employee. The said Chinnathai was entitled to the amount awarded under M.C.O.P.No.84 of 1988 and the appellants were entitled to the balance amount awarded in their favour. There was apportionment in the retirement benefits as well. Based on the terms of



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compromise, the petitioner is claiming compassionate appointment. However, the respondents have declined the same stating that as per G.O.Ms.No.34 Labour and Welfare Department, dated 16.04.2002, the petitioner cannot be considered as legal heir of the deceased employee and hence, he cannot claim compassionate appointment.

5.The learned Counsel appearing for the petitioner submitted that even illegal children are entitled to be considered as legal heir of the deceased employee. In the present case, as per the terms of compromise, the second wife and the children born out of the second wife were declared as legal heirs of the deceased employee.

6. Heard Mr.C.Sundaravadivel the Learned Counsel appearing for the petitioner and Mr.N.Muthuvijayan, the Learned Special Government Pleader appearing for the respondents and perused the records.



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7. The petitioner may be right in so far as the petitioner being the son of the second wife is entitled to terminal benefits like DCRG etc. of the deceased employee. But the petitioner's mother is not entitled to the said terminal benefits as per law. It is based on the compromise the said terminal benefits was disbursed to the petitioner's mother. It is also settled proposition that the second wife is not entitled to pension of the deceased employee.

8. The petitioner is claiming to declare the petitioner's mother as legal heir based on the compromise. Such claim of the petitioner is against law and hence it is illegal. As per settled legal preposition the second wife cannot be considered as legal heir of the deceased employee. Hence this Court is of the considered opinion that the petitioner's mother cannot be declared as legal heir based on the terms of compromise.

9. On perusing the G.O.Ms.No.18 Labour and Employment Department



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dated 21.03.2020 the legal heirs are only sons, daughters, adopted sons and daughters. It has not included the children of second wife. In the present case, the petitioner is claiming compassionate appointment. The petitioner is the son of the deceased employee born out of the 2nd wife. Even illegitimate children are entitled to the benefits of the deceased employee. But not for compassionate appointment. Therefore, this Court is of the considered opinion that the claim of the petitioner for compassionate appointment cannot be considered.

10. Moreover the petitioner was a minor at the time of the death of the deceased employee. The issue of granting compassionate appointment for a minor is considered by the Hon'ble Full Bench of this Court W.P. (MD) Nos.7016 of 2011 and batch by judgment, dated 11.03.2020 by framing the following question for reference:

"Whether the view taken in A.Kamatchi's case holding that an application for compassionate appointment made even beyond three years of the death of the deceased needs consideration, is the correct law or the



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judgment of the Division Bench in N.Renugadevi's case, where a contradictory view has been taken, is the correct law?"

The Hon'ble Full Bench has considered all the previous judgments and discussed in detail after taking note of various Government order / guidelines in relation to compassionate appointment. The scope of belated application by minors after attaining majority was considered and the Hon'ble Full Bench had categorically held that the three years period ought to be taken into account from the date of death of the deceased employee and it cannot be calculated from the date of attaining majority. Following the Hon'ble Full Bench judgment, the Hon'ble Division Bench had passed orders in W.A.(MD) No.682 of 2022 in the case of ***V.Deepika Vs. the District Collector and others***, W.A.(MD) No.457 of 2022 in the case of ***P.Babyshalini Vs. the Principal Secretary and others*** and W.A.(MD) No.769 of 2022 in the case of ***K.Nambirajan Vs. Divisional Engineer and others***, wherein, the claim of the legal heirs was rejected and held that the



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application was submitted belatedly beyond the period of three years and the three years period ought to be calculated from the date of death of the Government servant. Any claim beyond the scheme of compassionate appointment cannot be entertained.

11. The object and purpose of the compassionate appointment is to provide immediate financial assistance to the family of the deceased Government servant, so as to protect them against any form of indigent circumstances because of the death of the sole bread winner of the family. The Hon'ble Supreme Court has taken a consistent view that the family members of the deceased employee should not be considered for appointment on compassionate basis beyond the period fixed under the scheme. The Hon'ble Supreme Court in the case of ***Sanjay Kumar Vs. State of Bihar***, reported in ***(2000) 7 SCC 192***, has held that when the very purpose of compassionate appointment is to see that the family gets immediate relief, then the application filed by the dependent of the deceased employee after



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he attains majority cannot be entertained. Considering the belated applications will be contrary to the scheme framed by the Government. It will also be contrary to the judgments of the Supreme Court. The Hon'ble Full Bench has held that the scheme does not permit entertaining an application by a dependent after attaining majority, hence the period of limitation ought to be considered from the date of death alone and not from the date of attaining majority.

12. In the present case the employee died on 09.08.1987 and the petitioner submitted an application on 11.08.2010. Hence the application is belated one and beyond the period of three years and hence cannot be considered. Therefore, this Court following the judgment of the Hon'ble Full Bench and the principles laid down by the Hon'ble Supreme Court in several cases, is of the considered opinion that the petitioner's claim for compassionate appointment cannot be considered since it is beyond the three years period from the date of death of the deceased employee. Hence, the claim of the petitioner is rejected. For the reasons stated



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supra, the writ petition is dismissed. No costs.

Index : Yes / No

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Internet : Yes

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To

1.The Director General of Police,
Shevalior Sivaji Ganesan Road,
Chennai-600 004.

2.Superintendent of Police,
Ramanapuram.



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S.SRIMATHY, J

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