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WP.No.31298/2016

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.31298/2016 & WMP.Nos.27161/2016 & 4650/2020

N.Sabarinathan

... Petitioner

Versus

1.The Inspector General of Registration
Santhome, Chennai 600 028.

2.The District Registrar
O/o.The District Registrar,
District Collector Campus
Coimbatore 641018.

3.The Sub Registrar,
Madhukarai Sub Registrar Office
Coimbatore-641 105.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records pertaining to the 1st respondent in proceedings in No.44072/Ko2/2012 dated 08.12.2015 and quash the same as illegal, incompetent and ultra vires and consequently, direct the respondents to appoint the petitioner on any eligible post on compassionate ground.



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For Petitioner : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Ravikumar, Spl.GP

ORDER

- (1) The writ petition has been filed in the nature of certiorarified mandamus seeking records of the 1st respondent, Inspector General of Registration, Santhome at Chennai, in proceedings No.4472/K2/2012 dated 08.12.2015 and quash the same and to direct the respondents to appoint the petitioner, on any eligible post on compassionate grounds.
- (2) In the affidavit filed in support of the writ petition, it had been stated by the petitioner that his father Mr.M.Nagarajan was working as Night Watchman under the 3rd respondent, Sub Registrar at Madhukarai Sub Registrar Office at Coimbatore. While he was in service, he unfortunately died on 12.09.2009 due to medical ailments. At the time of the death of the father, the petitioner was 14 years and was studying in 9th standard in Government High School at Thondamuthur, in Coimbatore District. The mother of the petitioner



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herein has not educated herself. It is stated that the petitioner's mother had applied seeking for compassionate employment on 05.09.2012. Though the petitioner herein was a minor at that particular point of time and had just qualified 10th standard, the application was for seeking employment for the petitioner herein. The petitioner has an elder sister and both the elder sister and the mother of the petitioner had stated that they have no objection for grant of employment on compassionate basis to the petitioner herein. The petitioner attained the age of majority on 18.11.2013 and had then given an application in his own name on 12.05.2014. This application came to be rejected by the 2nd respondent by proceedings in No.44072/Ko2/2012 dated 08.12.2015.

- (3) It had been stated that on the first date when the application was made by the mother of the petitioner namely 04/05.09.2012, the petitioner had not completed 18 years of age and therefore, employment could not be granted to him.
- (4) In the counter affidavit filed in support of the writ petition, reliance has been placed on that particular provision, namely, Rule 20[6] of



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the Tamil Nadu Government Servants [Conditions of Service] Act,

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2016. The said Rule is as follows:-

"20.(6)(a) No person shall be eligible for appointment to any service by direct recruitment, unless he has completed eighteen years of age on the first July of the year in which the vacancy is notified.

(b) No person shall be eligible for appointment to any service on compassionate grounds, unless he has completed eighteen years of age on the date of submission of application, to the appropriate authority within the period of three years from the date of death of the Government servant."

- (5) It provides that no person shall be eligible for appointment for any service on compassionate grounds unless [a]he/she has completed 18 years of age on the date of submission of application ; and [b]such application should be submitted within a period of three years from the date of death of the Government servant. Therefore, the provision signifies two conditions namely, completion of age of 18 years and also that such application should be submitted within a period of three years. This also means that the applicant should have



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completed the age of 18 years within a period of three years from the date of death of the Government servant. This may not always be the case. No Government servant or for that matter, no person in the world can determine his/her date of death to ensure that his/her son or daughter becomes 18 years within three years from the date of his/her death. This is impossible to stipulate. The alternate is for the widow or for any other child or daughter or son in the family to seek employment. But, in the instant case, it is complained that the widow herself had not educated herself/was illiterate and it is also stated by the learned counsel for the petitioner that the widow had suffered paralysis and could not therefore, do any effective work. It was under those circumstances that though she had applied in the initial stage within the period of three years on 05.09.2012 itself, the application was made on behalf of the petitioner herein who had just completed 10th standard on that time.

- (6) There is a Division Bench judgment which can be referred to for an issue like this and it is reported in **2013-2-CWC-758 [WA/MD].No.578/2013 – A.Kamatchi Vs. The Chairman, Tamil**



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Nadu Electricity Board and Others]. The question that arose before that Division Bench was whether an application for compassionate appointment made by son or daughter of the deceased after they attained majority is liable to be rejected for not submitting the application within three years particularly when the widow was not found fit to be appointed. In effect, the question which was raised was whether an application given by a son or daughter after the period of three years from the date of death of the Government servant can be rejected since it was not given within the period of three years without taking into consideration, whether the widow was in a position to actually perform the duties required of a Government servant. It was held by the Division Bench that if the widow had applied for compassionate appointment within the period of three years and for some reason she could not be appointed and the same is followed by another application by either the son or daughter after he or she attains majority, the said application made by the son or daughter cannot be rejected. The explanation given by the Division Bench is simple and it is straight forward. It only provides for a



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situation where a son or daughter would be less than 15 years on the date of death of their father/Government servant, then they could never had completed 18 years within the period of three years. Therefore, an obligation is cast on the widow to so apply for employment on compassionate basis. If that widow is, for some reason, not able to perform functions or duties required of a Government servant, then if the son or daughter, after he or she attains the age of majority, must follow up that particular application given by their mother. This is the ratio laid down in the said judgment.

- (7) To elaborate it further, let me extract the wordings in the said judgment:-

"16.Now, cleared of the legal position, it is pertinent to note that within three years of her husband's death, Thirumalai, the mother of the appellant has applied for her appointment on compassionate ground, she was not appointed for want of vacancy, so, she was not denied job, now, she cannot be appointed because of her age, within three years of his attaining majority the appellant had applied for



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appointment. The legal heirs of the deceased employee, namely, appellant's mother and his sister have also given their no objection for appellant's appointment. The appellant is also well within the eligible age for appointment. In the circumstances, the impugned order of the 3rd respondent, dated 01.02.2010 and of the Writ Court, dated 13.09.2010 are unsustainable in law."

- (8) In the instant case, the mother of the petitioner herein had applied within the period of three years. Within the period of three years after the death of the father, the petitioner had still not crossed the age of 18. He attained the age of 18 on 18.11.2013. He then made an application on 12.05.2014. That application was within the period of three years from the date of attaining the age of majority. This was rejected and the reason for that rejection was that the petitioner was less than 18 years and did not complete the age of 18 within three years period from the date of death of his father.
- (9) In cases of anomalous situations like this, the dictum aforementioned of the Division Bench judgment comes to the rescue of this Court and that Court's interpretation directly applies.



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(10) The learned Special Government Pleader reiterated the position under Rule 20[6] of the Tamil Nadu Government Servants [Conditions of Service] Act, 2015. The Rule however stands. It is not wiped out of the Regulations. But, however, the judgment of the Court also prevails and therefore, I would fall back on the ratio laid down in the aforementioned Division Bench judgment.

(11) Learned counsel for the petitioner also relied upon the judgment reported in **2006 [9] SCC 195 [Syed Khadim Husasin V. State of Bihar and Others]**. The facts in that case were that a Government servant who was working has been in Public Works Department, died while in service in 1991. He left behind his widow and five minor children. The widow applied for compassionate appointment in the year 1993. Her application was rejected. Then the appellant before the Hon'ble Supreme Court applied for compassionate appointment in 1995. That was also rejected in 2001 on the ground that he was aged just 13 years. The Hon'ble Supreme Court held that the rejection was not justified since on the date of rejection, the appellant had crossed the age of 18 years. In the instant case, the petitioner had crossed the



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age of 18 years. The mother of the petitioner had applied for employment on compassionate basis within the period of three years from the date of death of her husband. The petitioner himself had applied for employment within the period of three years from the date of attaining the age of majority. An obligation is placed on the respondents to re-examine the entire issue on the basis of the aforementioned observations made and more particularly, on the basis of the dictum laid down by the Hon'ble Supreme Court and by the Division Bench.

- (12) The impugned order is, therefore set aside and a direction is given to the respondents to issue notice to the petitioner herein, grant him an opportunity of personal hearing, examine his qualification, examine the medical ailments of the mother of the petitioner herein and determine as a fact, whether she was actually disabled when she applied for compassionate employment, particularly, because it should be kept in mind that compassionate employment is granted not as a matter of right, but as a matter of duty by the State Government towards one of its employees who dies in harness and to ensure that



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the family members are not left high and dry consequent to the death of the public servant. These are the object behind grant of compassionate employment and therefore, all these factors may be re-examined by the respondents. They may examine the entire issue within a period of six weeks, and if the petitioner is otherwise qualified and is otherwise eligible. It would only be appropriate that they provide him with some employment.

- (13) The writ petition stands **disposed of**. The respondents may also ensure that the sister of the petitioner herein and any of the other brothers and sisters give No Objection Certificates and in this regard, the respondents may obtain such NOC in writing and if they entertain any personal doubt, may issue notice to them and enquire them in person before granting employment to anyone of the members of the family. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes



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