



W.P.No.5483 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.5483 of 2016

and

W.M.P.No.4830 of 2016

A.Sounthar

...Petitioner

Vs

1.The Commissioner of
Municipal Administration,
Ezhilagam, 6th Floor,
Chepauk, Chennai – 5.

2.The Commissioner,
Krishnagiri Municipality,
Krishnagiri.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent dated 20.02.2013 in Na.Ka.No.52449/12/H2 and quash the same and consequently direct the respondents to give compassionate employment to the petitioner.

For Petitioner : Mr.N.A.Nissar Ahmed, Sr. Counsel



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for Mr.L.Kowser Nissar

For Respondents : Mr.T.M.Rajangam,
Government Advocate

ORDER

Heard Mr.N.A.Nissar Ahmed, learned Senior Counsel for the petitioner and Mr.T.M.Rajangam, learned Government Advocate for the respondents.

2. The petitioner is the son of late V.Arunachalam through his second wife. The late employee, while serving as a Gang Mazdoor in the second respondent Municipality, died in harness on 03.10.2004. The petitioner's mother claims to have made an application on 05.01.2005, seeking for compassionate appointment for the petitioner herein. However, since a civil suit in O.S.No.51 of 2005 was pending before the concerned Court, in which the children of the first wife of the late employee had sought for the death benefits of the late employee, the second respondent herein had rejected the petitioner's mother's request seeking for monetary and other benefits of the late employee, through his proceedings dated 17.03.2005. Thereafter, the petitioner's mother claims



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to have made an application on 05.03.2007 to the Hon'ble Chief Minister, Government of Tamil Nadu, ventilating her grievances for compassionate appointment for one of her children, including the petitioner herein, the copies of which were served on the respondents also.

3. In the mean time, the suit, which was dismissed for default, was taken upon on appeal in A.S.No.36 of 2008 before the learned Subordinate Judge, Krishnagiri and on 08.09.2009, a compromise decree came to be passed, whereby, the children of the first wife had agreed to give up their right for compassionate appointment and such a right to claim compassionate appointment was mutually agreed to be given to the petitioner herein.

4. In this background, when the petitioner's mother once again approached the second respondent herein, an order dated 20.02.2013 came to be passed, rejecting the request for compassionate appointment, on the ground that the employee had died on 03.10.2004 and the application for compassionate appointment has been made after 3 years, which is against the proceedings in Government Letter No.202, dated



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08.10.2007. Challenging the same, the present writ petition has been filed.

5. The learned Senior Counsel appearing for the petitioner had produced a copy of the application submitted by the petitioner's mother dated 22.10.2007, as well as the application dated 05.03.2007, which has been addressed to the Hon'ble Chief Minister, Government of Tamil Nadu, in which copies have been marked to the second respondent as well. By placing such reliance, the learned Senior Counsel submitted that the application for compassionate appointment has been made well within 3 years, which has also been acknowledged by the second respondent and therefore, the impugned order itself is a factual mistake.

6. On the contrary, the learned Government Advocate appearing for the respondents submitted that the application was not made within 3 years to them and therefore, there is no infirmity in the impugned order.

7. The only reason assigned by the second respondent in the impugned order is that the application for compassionate appointment



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was not made within a period of 3 years, which is contrary to the Government Letter dated 08.10.2007. This reason seems to be a factual mistake, since the application dated 05.03.2007, which is produced before this Court, evidences that the copy marked to the second respondent, seeking for compassionate appointment, was acknowledged by them on 06.03.2007, by affixure of the office seal. This apart, in the proceedings of the first respondent herein, a reference has also been made to the application made by the petitioner's mother on 05.03.2007 for compassionate appointment.

8. In consideration of these two documents produced before this Court, I am of the view that the petitioner's mother had made an application within 3 years from the date of death of her husband. As such, the reason assigned by the second respondent, rejecting the petitioner's mother's application for compassionate appointment, is a factual mistake. Since no other reason has been assigned for rejecting the claim for compassionate appointment, this Court is of the view that the petitioner would be entitled for the relief sought for.



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9. In the light of the above findings, the impugned order dated 20.02.2013 is quashed. Consequently, there shall be a direction to the respondents herein to forthwith pass orders, granting appointment on compassionate grounds to the petitioner herein, within a period of 8 weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2023

Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

hvk

To

1.The Commissioner of Municipal Administration,
Ezhilagam, 6th Floor,
Chepauk, Chennai – 5.

2.The Commissioner,
Krishnagiri Municipality,
Krishnagiri.



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M.S.RAMESH,J.

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