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W.P.No.24439 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.24439 of 2022

M. Rajagiri

... Petitioner

Vs.

The District Collector,
Chengalpattu District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in Na.Ka.No.1507-2019-A3, dated 24.08.2022 and quash the same, consequently direct the respondent to provide compassionate ground appointment to the petitioner.

For Petitioner : Mr.S.P. Sudalaiyandi

For Respondents : Mrs.V. Yamuna Devi,
Special Government Pleader



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ORDER

Heard the learned counsel for the petitioner, as well as the learned Special Government Pleader appearing for the respondent.

2. The petitioner herein is the son of one Munusamy, who had died while serving as a Village Assistant at Anaikundram Village, Maduranthagam Taluk, Kancheepuram District, on 15.07.2001. After the death of the employee, the petitioner's mother had filed an application before the respondent seeking for compassionate appointment in January 2002. However, no orders were passed on the said application filed by the petitioner's mother on the ground that there was a ban imposed by the Government for appointment on compassionate ground from 29.11.2001 to 31.02.2006. After lifting of the ban, the Government had extended time for making an application for compassionate appointment by three months. In this background, when the claim of the petitioner came to be agitated before this Court in WP.No.954 of 2017, an order was passed on 31.08.2017, dismissing the Writ Petition. On appeal in WA.No.1435 of



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2018, the Hon'ble Division Bench of this Court through its order dated 02.08.2018, had rejected the stand taken by the respondent with regard to the delay in filing the application and held that there was no delay in the application at all. With this observation, the respondent was directed to consider the petitioner's application dated 20.11.2006, which was filed by him after he became a major and to pass appropriate orders in accordance with law. In view of the same, the present impugned order dated 24.08.2022 was passed, rejecting the petitioner's application on the ground that the application was made after the expiry of three years and that the family of the deceased employee is not distressed circumstances. Challenging the present impugned order, the present Writ Petition has been filed.

3. Both the reasons assigned in the impugned order, cannot be legally sustained. Insofar as the first reason that the application has been belatedly made, the same shall ought not to have even been referred to by the respondent in the impugned order, in view of the order passed by the Hon'ble Division Bench of this Court, clarifying that the application was



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within the time. The relevant portion of the order reads as follows:-

..... “6.The appellant's father died on 15.07.2001. According to the learned counsel for the appellant, the appellant's mother submitted the application for compassionate appointment in January 2002, but the respondent did not pass any order on the ground that there was a ban issued by the Government for compassionate appointment from 29.11.2001 to 21.02.2006. There is no dispute over the fact that there was a ban on compassionate appointment during the said period. After the ban was lifted by the Government, the appellant submitted his application on 20.11.2006, which is also not in dispute. A copy of the order passed by the Government in G.O.Ms.No.42 dated 12.03.2007 is enclosed in Page No.7 of the typed set of papers, from which it is seen that the Government has extended the period for receiving applications for appointment on compassionate grounds for three months from the date of issue of the said order, considering the ban order for filling up of the vacant posts. It is the submission of the learned counsel for the appellant that the appellant has submitted his application for compassionate appointment in the year 2004 after attaining majority, but the respondent did not receive the said application on the ground that there was a ban order imposed by the Government of Tamil Nadu



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for compassionate appointment. Whether the appellant has submitted the application in the year 2004 or not, the fact remains that there was a ban for compassionate appointment during the period from 29.11.2001 to 21.02.2006. That period has to be excluded for calculating the period of three years. The appellant has submitted his application on 20.11.2006, which is not in dispute. If the ban period is excluded, it cannot be stated that the appellant has submitted his application belatedly.

7.In view of the above stated circumstances, the rejection of the appellant's application for compassionate appointment on the ground that it was submitted belatedly, does not hold good. Hence, the respondents are directed to consider the application dated 20.11.2006 made by the appellant for compassionate appointment and pass orders in accordance with law, if he is otherwise eligible. The impugned order passed by the learned single Judge is modified accordingly and the writ appeal is disposed of. No costs.”

4. The aforesaid extract is self-explanatory. The reason assigned in the present impugned order is the same ground taken before the Hon'ble



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Division Bench also and therein, the Hon'ble Division Bench had taken note of the fact that there was a ban for making an application for compassionate appointment and also the subsequent G.O.Ms.No.42, dated 12.03.2007, which extended the period for making an application by three months after lifting of the ban and had thus, found the petitioner's application to be in time.

5. When the High Court has passed an order holding that there is no delay in the application, I do not find any justification on the part of the respondent in having assigning reason that the application is not filed within the time limit.

6. Insofar as the second reason that the deceased employee's family is not in financial crisis is concerned, the petitioner herein has produced a copy of the Income Certificate dated 29.12.2016, issued by the Zonal Deputy Tahsildar, Madhurantakam Taluk, Kancheepuram District. As per the certificate, a family of the deceased employee had an annual income of Rs.72,000/- only.



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7. In the impugned order, apart from an isolated sentence saying that the family does not look to be in financial distress, no other details have been given, as to how the respondent has come to such a decision. Before making a statement that any person is not in financial crisis, an inquiry ought to have been conducted by giving an opportunity to the concerned person, which is conspicuously absent in the present case.

8. Thus, the claim of the respondent in the impugned order, without making any reference to an inquiry being conducted or decisions to be taken with regard to the financial status of the petitioner is concerned, such a claim by the respondent, cannot be legally sustained.

9. This apart, a reference has also been made in the impugned order with regard to certain lands which stood in the name of the petitioner's father. This Court had directed the respondent to make an inquiry with regard to the income that could be derived from those lands.



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10. The learned Special Government Pleader, on instructions, submitted that an inquiry was conducted and it was found that the lands that stand in the name of the petitioner's father, does not fetch any income.

11. In this background, I have no hesitation to hold that the petitioner's family was and is certainly in financial crisis and therefore, both the reasons assigned in the impugned order have been held to be legally unsustainable and the petitioner would be entitled for compassionate appointment.

12. For the foregoing reasons, the impugned order dated 24.08.2022 passed by the respondent, is hereby quashed. Consequently, there shall be a direction to the respondent herein, to forthwith pass orders, appointing the petitioner to any suitable post on compassionate grounds. Such orders shall be passed at least within a period of three (3) months from the date of receipt of a copy of this order.



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13. In the result, the Writ Petition stands allowed. No costs

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Index: Yes
Speaking order
Neutral Citation: Yes
Internet: Yes

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To

The District Collector,
Chengalpattu District.



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M.S. RAMESH, J.

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