



*WP.No.28197/2017*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.28197/2017

D.Prasanth

... Petitioner

Versus

- 1.The Government of Tamil Nadu  
rep by its Secretary,  
Highways Department,  
Fort St George, Chennai.
- 2.The Chief Engineer [General]  
Construction and Maintenance  
Highways Department,  
Chepauk, Chennai.
- 3.The Superintendent Engineer,  
Construction & Maintenance  
Highways Department  
Coimbatore.
- 4.The Divisional Engineer  
Construction & Maintenance  
Highways Department, Coimbatore.
- 5.The Assistant Divisional Engineer  
Construction & Maintenance  
Highways Department



**WP.No.28197/2017**

Pollachi Division,  
Coimbatore District.

... Respondents

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**Prayer :-** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in Ku.No.1038/2017/Aa1/ dated 16.05.2017 on the file of the 3<sup>rd</sup> respondent and in Ku.No.985/2014/Aa2/ dated 02.06.2017 on the file of the 4<sup>th</sup> respondent and communicated to the petitioner by the 5<sup>th</sup> respondent in Ka.No.5/2011-E Nee.Vu. Dated 17.07.2017 and quash the same as unsustainable and unconstitutional and consequently direct the respondents to provide employment to the petitioner on compassionate grounds.

For Petitioner : Mr.N.Ramesh

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

### ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus, seeking records of the 3<sup>rd</sup> respondent, the Superintendent Engineer, Construction & Maintenance, Highways Department, Coimbatore, in Ku.No.1038/2017/Aa1/ dated 16.05.2017 and of the 4<sup>th</sup> respondent, the Divisional Engineer, Construction & Maintenance, Highways Department, Coimbatore, in Ku.No.985/2014/Aa2/ dated 02.06.2017 and communicated to the



**WP.No.28197/2017**

WEB COPY

petitioner by the 5<sup>th</sup> respondent in Ka.No.5/2011-E.Nee.Vu dated 17.07.2017 and to quash all the above and to direct the respondents to provide employment to the petitioner on compassionate basis.

- (2) The father of the petitioner, Dhandapani, who was working as Gangman in Highways Department in Pollachi Division, died on 08.08.2008, while in service. At the time of his death, the petitioner herein was aged 15 years. The petitioner also has a younger sister, mother and also a grandmother who are all legal heirs of Dhandapani. Within three years from the date of the death of Dhandapani, his wife/mother of the petitioner herein, D.Kokilavani, had submitted an application on 15.07.2011 seeking employment on behalf of the petitioner herein. The application was returned since the petitioner was 15 years having been born on 26.08.1996. After attaining the age of majority, the petitioner made a further application on 29.07.2015. That was rejected stating that the petitioner had not applied within three years from the date of death of his father. There was also a further communication which is available in the records which would indicate that the application had been misplaced and



**WP.No.28197/2017**

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inter-departmental communications were exchanged between the officials complaining about this particular fact. It was also presumed that no such application had been given by the petitioner herein. Finally, it was clarified that an application was actually received and that the original with the seal, has been misplaced in the office. The application of the petitioner thereafter had been rejected on the ground that the said application given by him was three years after than the death of his father. It had been contended by the respondents that even if the petitioner was a minor, that is not a relevant fact and that the application should have been filed within three years from the date of death of his father.

- (3) Learned Special Government Pleader also placed reliance on the counter affidavit filed wherein it had been stated that after perusal of all records, the application of the petitioner was rejected consequent to the Government Order in G.O.Ms.No.155, Labour and Employment [Q1] Department, dated 10.12.2014. It was contended that the application was not maintainable. It was further stated that none of the other legal heirs have applied for any compassionate appointment



**WP.No.28197/2017**

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till 25.06.2015. It had been stated that the petitioner will have to establish that the family was in indigent circumstances. The aforementioned Government Order in G.O.Ms.No.155, Labour and Employment [Q1] Department, dated 10.12.2014, stipulated that any application should be filed within a period of three years. It is therefore contended by the learned Special Government Pleader that the petitioner having made an application after three years from the date of death of his father, the application had been rightly rejected.

- (4) Heard the arguments advanced and perused the relevant records.
- (5) The following facts are not in dispute:
  - (a) The father of the petitioner Dhandapani was working as Gangman in the Highways Department, Pollachi Division.
  - (b) The petitioner's father died on 08.08.2008 while in service.
  - (c) The petitioner is his son.
  - (d) On 15.07.2011, the mother of the petitioner, D.Kokilavani, had filed an application seeking employment for her son, the petitioner herein.
  - (e) The petitioner was born on 26.08.1996 which would indicate



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**WP.No.28197/2017**

that on the date of the death of his father, he was aged less than 18 years of age. He attained the age of majority on 25.06.2015.

- (6) It is the case of the petitioner that after attaining the age of majority, he had filed an application seeking employment on 29.07.2015. That particular original application was misplaced in the office of the respondents. But, however, that such application was filed, had been stated by the 4<sup>th</sup> respondent in his communication dated 27.03.2017 in Ka.No.985/2014/Aa2. It is therefore, not the fault of the petitioner that the original application was actually misplaced. The fact that he had made an application, was accepted and admitted by the respondents.
- (7) The only issue which will now have to be examined is whether the petitioner who is less than 18 years of age at the time of death of his father, could maintain an application seeking compassionate appointment after attaining the age of majority of 18 years.
- (8) One of the pre-conditions to maintain such an application is that the original application should have been filed within three years from the date of death of the public servant and if the legal heir of the deceased



**WP.No.28197/2017**

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employee, after attaining the age of 18 years, files a subsequent application, it could be construed as a continuation of the earlier application. In the instant case, the mother of the petitioner herein had filed an application seeking compassionate appointment for her son, the petitioner herein, within a period of three years from the date of death of her husband/father of the petitioner herein. That fact is not in dispute. Since the respondents have also admitted that the petitioner had actually filed the application, it would have to be examined that G.O.Ms.No.155, dated 10.12.2014, which had come in for consideration before this Court, has been interpreted correctly by the respondents.

- (9) In this case, reference can be made to the judgment reported in **2013 [8] MLJ 190 [P.Sathiaraman, Tiruchirappalli District Vs. Secretary to Government, Department of Electricity and Others]**. In a writ appeal in WA.[MD].No.737/2013, consequent to the dismissal of the writ petition in WP [MD].No.13980/2009, a Division Bench at Madurai Bench, had examined an issue with similar circumstances. The appellant therein, had applied for compassionate appointment as



**WP.No.28197/2017**

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his father died when he was a minor. The mother had sent a representation within a period of three years. It was found that she had actually applied within the period of three years and that when the petitioner applied after attaining the age of majority. The Division Bench held that it was a continuation of the earlier application. The Division Bench had referred to a catena of decisions on this point and had finally held as follows:-

*"12.....After analyzing the above said case laws, it was held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who have then not attained majority and subsequently, applied within three years of their attaining majority, the request could be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond 3 years of*



**WP.No.28197/2017**

*death of the father. It is not the case of the respondents that the family of the appellant is not in indigent status as on today.*

*13. For the foregoing reasons, the order of the learned Single Judge made in W.P.(MD)No.13980 of 2009 dated 13.09.2010 is liable to set aside.*

*14. Accordingly, this writ appeal is allowed and the order of learned Single Judge dated 13.09.2010 made in W.P.(MD)No.13980 of 2009 is set aside. The appellant herein is directed to produce a Certificate from the competent authority to the effect that his family is in indigent circumstances as on today, within four weeks and submit the same before the third respondent herein along with a copy of this Judgment. On receipt of the same, based on the representation of the appellant dated 22.12.2009, the respondents shall appoint him in any suitable post within two weeks therefrom. No costs."*

(10) The reasons therein would directly apply to the facts of this case.

(11) In view of the dictum laid down which is binding on this Court, the writ petition stands **allowed** and the orders impugned herein, passed by the respondents 3, 4 and 5 dated 16.05.2017, 02.06.2017 and



**WP.No.28197/2017**

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17.07.2017 respectively, are hereby **set aside**. The petitioner herein is directed to produce the Certificate from the competent authority to the effect that his family is in indigent circumstances as on today within a period of four weeks from the date of receipt of a copy of this order and submit the same before the 5<sup>th</sup> respondent, who is directed to forward it to the 4<sup>th</sup> respondent and who is further directed to forward it to the respondents 3 and 2. On receipt of the same, the respondents are directed to pass necessary orders, if the Indigent Certificate is produced by the petitioner, appointing the petitioner in any suitable post, within a period of four weeks from that particular date. No costs.

04.08.2023

AP  
Internet : Yes



**WP.No.28197/2017**

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C.V.KARTHIKEYAN, J.,



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***WP.No.28197/2017***

AP

WP.No.28197/2017

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