



W.P.(MD).No.10095 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.10095 of 2023

and

W.M.P(MD)No.8881 of 2023

A.Karthick

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Public Works Department,
Secretariat,
Chennai-600 009.

2.The Chief Engineer,
Public Works Department /
Water Resources Organisation,
Periyar Vaigai Basin Division,
Tallakulam,
Madurai-625 002.

3.The Superintending Engineer,
Public Works Department /
Water Resources Organisation,
Periyar Vaigai Basin Division,
Madurai-625 002.



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4.The Executive Engineer,
Public Works Department /
Water Resources Organisation,
Periyar Main Canal Division,
Melur,
Madurai District.

5.The Assistant Executive Engineer,
Public Works Department /
Water Resources Organisation,
Periyar Main Canal Sub Division No.2,
Madurai-2.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the fourth respondent in Letter no. PA1/81/2013/(2017), dated 06.09.2017 and quash the same and consequently direct the respondents to grant appointment to the petitioner as Driver in the respondent Department under compassionate ground.

For Petitioner : Mr.M.Prabhakaran

For Respondents : Mr.D.S.Neduncheliyan
Government Advocate

ORDER

The present writ petition is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the fourth respondent in Letter no. PA1/81/2013/(2017), dated 06.09.2017 and quash the same and



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consequently direct the respondents to grant appointment to the petitioner as Driver in the respondent Department under compassionate ground.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate for the respondents and carefully perused the materials available on record.

3. The petitioner's father S.Annamalai was working as an Irrigation Assistant Selection Grade under the respondent Department. While in service, unexpectedly he died on 04.09.2002 and he was survived by his wife and four children including the petitioner. Immediately on the death of the petitioner's father, the petitioner's mother approached the fifth respondent seeking compassionate appointment. The petitioner's mother was sensitised that the Government had imposed a ban on compassionate appointment from November 2001 and hence, the application for compassionate appointment could not be received. The petitioner is the eldest son of the deceased employee Annamalai. The petitioner failed in ninth standard during the academic year 2006-2007. The petitioner attained his age of majority on 22.07.2008. On completion of 18 years, he obtained a Light Motor Vehicle Driving license on 19.01.2009 and



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registered the same in the District Employment Office on 05.06.2009. Being qualified for the post of Driver to be appointed on compassionate ground, the petitioner made an application seeking appointment on compassionate ground on 27.07.2009. On 14.07.2010, the petitioner's application seeking compassionate appointment was rejected on the ground that the petitioner failed to make an application within three years from the date of death of the employee. Challenging the same, the petitioner filed W.P(MD)No.84 of 2013, dated 18.03.2015 before this Court. This Court was pleased to allow the said writ petition and the relevant portion of which is extracted as follows:

“5. It is not in dispute that the petitioner was admittedly a minor at the time of the death of his father. Therefore, he made a representation on 27.07.2009, after attaining the majority. In my considered view, such application filed by the petitioner on attaining the majority, cannot be treated as belated application as the petitioner being a minor at the time of death of his father, cannot apply seeking for compassionate appointment within three years from the date of such death. Therefore, the petitioner made an application immediately after attaining the age of majority and such application ought to have been considered by the fourth respondent on merits instead of rejecting it on the reason that the same is belated one.

6. Accordingly, this writ petition is allowed and the impugned order is set aside and the matter is remitted back to the



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fourth respondent to consider the claim of the petitioner seeking for compassionate appointment and pass orders on the same on merits and in accordance with law if the petitioner is otherwise qualified to the post of Driver. Such exercise shall be done by the fourth respondent within a period of eight weeks thereafter.”

4. The said order was not complied by the respondents and hence, the petitioner filed contempt petition in Cont.P(MD)No.1564 of 2018 before this Court. In response to the said contempt petition, the respondents submitted the impugned order, dated 28.08.2017 which was already passed rejecting the petitioner's application seeking compassionate appointment on considering the same in the line of the order passed by this Court in W.P(MD)No.84 of 2013. Recording the same, the contempt petition was closed. Assailing the impugned order of rejection, dated 06.09.2017, this writ petition came to be filed.

5. The learned Government Advocate for the respondents had filed counter and categorically submitted that the petitioner is not entitled to seek compassionate appointment, since he was a minor of aged about 12 years on the date of death of the employee. Conceding the fact that there was a ban in making compassionate appointments at that point of time, the learned



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Government Advocate submitted that the ban was lifted vide G.O(Ms)No.16 of the Personnel and Administrative Reforms (G) Department, dated 21.02.2006. However, another G.O in G.O(Ms)No.18 of the Labour and Employment (Q1) Department, dated 23.01.2020 came to be issued with respect to compassionate appointment. In the line of the said Government Order, an application seeking compassionate appointment ought to have been made within three years from the date of death of the employee and there is no provision permitting the legal heirs of the deceased employee to make an application on attaining the age of majority and on that ground, this writ petition is liable to be dismissed.

6. However, this Court is of the considered view that this is an exceptional case wherein the point of rejecting the petitioner's application seeking compassionate appointment on the ground of three years has already been quashed by the order of this Court in W.P(MD)No.84 of 2013 wherein, a positive direction was given by this Court to the respondents by setting aside the impugned order of rejection and remitting back the matter to the fourth respondent with a clear direction to consider the claim of the petitioner seeking compassionate appointment stating that making an application on attending majority will not debar an applicant from seeking compassionate appointment.



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By passing the impugned rejection order on the same grounds by filling old wine in a new bottle and rejecting again that the application has not been made within a period of three years from the date of death of the employee is *per se* illegal and the mandates of the G.O(Ms)No.18 of the Labour and Employment (Q1) Department, dated 23.01.2020 will not be applicable in this case, since it is an exceptional case. Accordingly, the impugned order, dated 06.09.2017 hereby quashed and the third respondent is directed to provide the petitioner with an appointment in a suitable post within a period of four (4) weeks from the date of receipt of a copy of this order.

7. This writ petition stands allowed, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

10.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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L.VICTORIA GOWRI, J.

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