



W.P(MD)No.17968 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.08.2023

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THE HONOURABLE MRS. JUSTICE L.VICTORIA GOWRI

W.P(MD).No.17968 of 2022

Periyanan

...Petitioner

Vs.

1.The Principal Director,
Highways Department,
Guindy,
Chennai – 25.

2.The Superintending Engineer,
National Highways,
O/o. the Superintending Engineer,
Madurai – 625 020

3.The Divisional Engineer,
National Highways,
Office of the Divisional Engineer,
Thiruchirapalli – 20,
Trichy District.

...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 pertaining to the impugned order passed by the 1st respondent



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in Memorandum No.2452/Nir 1(2)/Nir.7/2010, dated 10.02.2022 and the impugned order passed by the 2nd respondent in Memorandum No.615/ A2/ The.Ne./2022, dated 04.04.2022 quash the same and consequently, directing the respondents to appoint the petitioner as Salai Paniyalar (Road Worker) on compassionate ground in the National Highways Department.

For Petitioner : Mr.I. Velpradeep
For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order passed by the 1st respondent in Memorandum No.2452/ Nir 1(2) / Nir.7/2010,, dated 10.02.2022 and the impugned order passed by the 2nd respondent in Memorandum No.615/A2/ The.Ne./ 2022, dated 04.04.2022 quash the same and consequently, directing the respondents to appoint the petitioner as Salai Paniyalar (Road Worker) on compassionate ground in the National Highways Department.

2. The petitioner's father viz., Santhanam was working as a



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Gang Mazdoor under the 2nd respondent. While in service, he suffered Schizophrenia, as a result of which, he was directed to appear before the medical board and he was declared as medical by in-capacitated. On that ground he was relieved from service on 01.09.1997. Thereafter, on 12.10.2006 vide proceeding of the third respondent, the petitioner's father was allowed to retire on medical in-capacity with effect from 01.09.1997. On 26.11.2007, the petitioner made an application before the first respondent seeking compassionate appointment. On receipt of the petitioner's application, the third respondent vide his communication, dated 31.05.2010 sent a proposal to the second respondent recommending the petitioner's case. However, nothing positively happened. Hence, the petitioner filed W.P(MD).No.12551 of 2021 before this Court in this regard seeking compassionate appointment. On 17.08.2021 this Court disposed of the said Writ Petition directing the petitioner to make a fresh application to the third respondent on the basis of which, they could consider his application. Further, as per the order passed by this Court, the petitioner submitted a fresh application on the basis of the earlier application, dated 26.11.2007 on 10.11.2021 to the third respondent. The third respondent forwarded the petitioner's application along with a proposal to the 2nd respondent on 11.11.2021. The second respondent in-



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turn forwarded the said application and proposal to the first respondent on 16.11.2021. On 30.11.2021 the third respondent sought for some additional documents, which was also promptly provided by the petitioner. On 29.12.2021, the second respondent once again forwarded all the documents along with legal opinion, dated 12.11.2021 to the first respondent. Finally, on 10.02.2022, the impugned order came to be passed rejecting the petitioner's application seeking compassionate appointment. Assailing the said order, this petition came to be filed.

3. Mr.Prakash, learned Additional Government Pleader appearing for the respondents justifying the impugned order passed by the first respondent submitted that the petitioner's father was allowed to retire with effect from 01.09.1997. But the application seeking compassionate appointment at the first instance was made only on 26.11.2007, that is beyond the period of three years from the date of relieving of the petitioner's father from service. Hence, in terms of G.O.Ms.No.18, dated 23.01.2020, the petitioner is not entitled to any appointment on compassionate ground and on that basis the impugned order need not be interfered. He further submitted that the petitioner's father received all the terminal benefits with effect form 01.09.1997. On 15.05.2007, without any



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whisper, having received the entire terminal benefits with effect from 01.09.1997, the petitioner is not legally entitled to make an application seeking compassionate appointment after a period of 10 years from the date of relieving of his father from service and hence, the impugned order is in order. In furtherance to the same, the learned Additional Government Pleader circulated a letter of the Special Chief Engineer (General), sent to the Chief Engineer, National Highways, dated 08.12.2005 communicating the status of the petitioner's father's proposal for pension from 01.09.1997. The said letter reveals that the petitioner's father's proposal for pensionary benefits was pending before the various authorities of National Highways Department during various period of time till 08.12.2005 and thereafter, finally it came to be sanctioned on 12.10.2006 with effect from 01.09.1997.

4. This Court is of the considered view that the elaborate submission of the learned Additional Government Pleader especially relying upon internal official communication of the National Highways Department, dated 08.12.2005, revealed the red-tapism in the Department of National Highways in dealing with the pension proposal of an employee who was compelled to go under retirement under medical in-capacity.



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After being relieved from service on 01.09.1997, the petitioner's family was compelled to suffer without pension till 12.10.2006. When the petitioner's father's pension proposal was finally considered and the petitioner's father was allowed to retire with effect from 01.09.1997, within one year i.e., on 26.11.2007, the petitioner made an application seeking compassionate appointment that too for a “சாலைப் பணியாளர்” viz., Road Worker. That application was also handled with much callousness by the respondents and finally came to be rejected only on 10.02.2022. At this point of time, the learned Additional Government Pleader relying upon the order passed by the Hon'ble Division Bench of this Court, dated 08.07.2022 in WA(MD).No.682 of 2012, explained the cause for delay and the relevant portion is extracted as follows:

“15. Apart from this, the main argument advanced by the learned senior counsel that there is no indication in the Government order or the scheme within what period the application for compassionate employment should be disposed of, we provide that until any such rules are framed or Government Order is issued or a provision is made in the scheme, a claim of compassionate appointment on the date when it is received should be disposed of immediately without causing any delay but preferably not beyond a period of six months from the date of submission of such application. We have said this keeping in mind that certain verifications are required to be undertaken before on employment under compassionate grounds is offered and



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the applicant also needs to furnish necessary information as well as documents in support of his / her claim of compassionate appointment. We direct the State Government to issue a Government Order to that effect so as to bind all the authorities and departments concerned to comply with the above directions strictly. Rules should be consolidated based on the principles indicated above to be applied uniformly by the State Government in all departments without deviation. It would be appropriate for the State Government to do so in order to avoid any litigation.”

5. The particular paragraph relied on by the learned Additional Government Pleader mandates that preferably within six months the application seeking compassionate appointment has to be considered. In this case, the application has been considered and the impugned order of rejection came to be passed after a period of 15 years. Though it is a settled principle of law that the application made for appointment on compassionate ground cannot be granted beyond a period of several years especially after a period of 10 years, in this case, the employment sought for by the petitioner is only “road worker” and he is 46 years of age. G.O.Ms.No.18 has prescribed maximum age limit to be 50 years for grant of compassionate appointment to the applicant. Since the petitioner has not crossed the maximum age limit prescribed by the said G.O, he falls within the category which would entitle him to seek an appointment on



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compassionate ground. Hence, this Court is inclined to quash the impugned order passed by the 1st respondent, dated 10.02.2022. Consequently, the first respondent is directed to give an appointment order to the post of “சாலைப் பணியாளர்” viz., “Road Worker” to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

6. Accordingly, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.08.2023

Index : Yes / No
Internet : Yes/ No
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L.VICTORIA GOWRI, J.,

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