



W.P.(MD).No.21626 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.21626 of 2023

Yuvashri

... Petitioner

Vs.

1.The Joint Transport Commissioner,
O/o. The Joint Transport Commissioner,
Chepakkam,
Chennai-600 005.

2.The Regional Transport Officer,
O/o. The Regional Transport Officer,
Theni,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings, dated 16.02.2021 passed by the 1st respondent in his proceedings in Pa.Mu.No.11973/RB1/2020 and quash the same and consequently directing the respondents to consider the petitioner for the appointment in the compassionate ground of deceased mother Pachayammal in the 2nd respondent office within the time stipulated by this Court.

For Petitioner : Mr.M.A.M.Raja



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For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed to call for the records of the impugned proceedings, dated 16.02.2021 passed by the 1st respondent in his proceedings in Pa.Mu.No.11973/RB1/2020 and quash the same and consequently directing the respondents to consider the petitioner for the appointment in the compassionate ground of deceased mother Pachayammal in the 2nd respondent office within the time stipulated by this Court.

2. The petitioner's mother, namely Pachayammal was working as Junior Assistant in the 2nd respondent office. While in service, her mother passed away on 06.05.2017. The petitioner's father, one Suruliraj had passed away as earlier as in the year 2006 even before the death of her mother. The said Pachayammal and Suruliraj were survived by the petitioner and her sister, Thulasi and presently they are under the custody of their maternal uncle, namely Vadivel. On the demise of her mother, the petitioner submitted an application for appointment on compassionate ground on 04.05.2018 to the 2nd respondent



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office. The 2nd respondent had issued proceedings, dated 01.06.2018 requiring the petitioner to obtain guardian certificate with respect to her guardianship by her maternal uncle Vadivel through Court of law and accordingly, the petitioner's maternal uncle had obtained guardianship order on the file of the learned Principal District Judge, Theni in G.W.O.P.No.31 of 2018, dated 07.07.2020. Thereafter, the petitioner's maternal uncle approached the 2nd respondent office seeking appointment on compassionate ground for the petitioner. However, there was no response from the 2nd respondent office and hence, on 20.04.2020, the petitioner made a representation through registered post to the 2nd respondent. The same was forwarded by the 2nd respondent to the 1st respondent for consideration. The 1st respondent passed the impugned rejection order, dated 16.02.2021 refusing to provide the petitioner with appointment on compassionate ground on two grounds, namely the petitioner had not made her application seeking compassionate appointment within a period of 3 years from the date of death of the employee and the petitioner is at the age of 16 and had not attained the age of majority on the date of application. Assailing the same, this writ petition came to be filed.



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3. The learned Special Government Pleader vehemently submitted that there is no infirmity or illegality in the impugned order passed by the 1st respondent, because obviously, the age of the petitioner was only 16 years on the date of second application and she was 14 years on the date of first application i.e., on 20.04.2020 and 04.05.2018 respectively. Unless and until the petitioner attains the age of majority, the respondents cannot consider the petitioner's application. On that basis, he pressed for dismissal of the writ petition.

4. In view of the facts and circumstances of the case, this Court is inclined to observe that the petitioner and her little sister are surviving under the custody of her maternal uncle and both their parents have passed away. The mandates of G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020 requires the respondents to reject those applications seeking compassionate appointment made beyond a period of 3 years from the date of death of employee and applications made by the legal heirs of the employee who have not attained the age of majority. The petitioner had made an application seeking appointment on compassionate ground as early as 04.05.2018, though she was a minor. Only on the direction of the 2nd respondent vide proceedings,



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dated 01.06.2018, the petitioner's maternal uncle one Vadivel obtained guardianship order by filing G.W.O.P.No.31 of 2018 before the learned Principal District Judge, Theni and the learned Principal District Judge vide order, dated 07.07.2020 had appointed the said Vadivel as the guardian of the petitioner and her sister Thulasi. In continuation to the earlier application made by the petitioner on 04.05.2018 and in terms of the direction made by the 2nd respondent vide proceedings, dated 01.06.2018, the petitioner's uncle had approached the 2nd respondent in 2020 making an application seeking appointment on compassionate ground for the petitioner. Since the same was not considered, lastly the petitioner herself made an application on 20.04.2020. However, the same came to be rejected by the impugned order, dated 16.02.2021. The 1st reason by which the 1st respondent had rejected the petitioner's application is *per se* illegal for the fact that the petitioner had promptly made an application as early as on 04.05.2018 and thereafter, on the direction of the 2nd respondent, after obtaining the guardianship order from the competent Court, her maternal uncle Vadeivel has also submitted an application in 2020 seeking appointment on compassionate ground. As far as the 2nd reason for which the 1st respondent had rejected the petitioner's claim, this Court is inclined to observe that the respondents ought to have considered that the



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application seeking appointment on compassionate ground is made by a legal heir of an employee, who is an orphan.

5. This Court in ***W.P(MD)No.11808 of 2020 (S.Subesh Vs. The Chairman and Managing Director & Others)*** in a similar case has passed favourable orders to the petitioner therein and the relevant portion of which is extracted as follows:

23. Here in the case in hand, the application was filed within three years period, of course, strictly speaking, on the date of application, the petitioner was still short of 64 days to attain the majority. This kind of cases, in the considered opinion of this Court, can be fit under the category of application not made belatedly, but within the time, however, some nominal shortage of few days to attain the majority.

25. In this context, the relevant observation made by the Hon'ble Full Bench in the aforesaid decision can usefully be referred to hereunder:

"5. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. The argument that there are some exceptional cases where people hardly get information is a far-fetched argument raised to dilute a reasonable time that has been fixed under the rules and the scheme and, in



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our opinion, caters sufficiently to allow a dependent to stake his/her claim for compassionate appointment. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority, such lapse of time on the part of the claimant will definitely lead to dilute the immediacy of the requirement. The time spent to attain majority cannot be a ground to establish the existence of indigence even after attaining the age of majority. This, in our opinion, has also been taken due care of by providing a period of three years for moving an application for compassionate appointment which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority."

26. Therefore, it was opined by the Full Bench that, the period of three years for moving application for compassionate appointment means that, if the dependent is only 15 years of age, he/she can apply immediately after attaining the age of majority. Here in the case in hand, at the time of death of his father, the petitioner was 15 years old and therefore, within the three years period, he has made application that has been an admitted fact. However, the only objection raised by the respondent TANGEDCO is that, on the date of completion of exactly three years period from the date of death of father of the petitioner, the petitioner was short of 64 days in attaining the majority. These



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kind of marginal or very short period to attain the majority can very well be taken care of by the employer provided if the application is filed by the legal heir within the three years limitation and also at the time of death of the employee, the legal heir was 15 years of age. This has been exactly viewed by the Hon'ble Full Bench in the aforesaid paragraph. Therefore, if the said principle is applied to the present facts of the case, exactly the petitioner's application which was filed within three years period and also the petitioner has attained the majority within 64 days from completion of three years from the date of death of his father, cannot be equated with other applications, which would have been filed either after the attainment of majority for several years from the date of death of the employee or there would not have been any application at all filed within the three years period."

6. I am fully in consonance with the order passed by this Court in the above writ petition discussed supra. Though the petitioner made an application as earlier as on 04.05.2018, the petitioner was a minor at that point of time. Though the respondents have rejected the petitioner's application, dated 20.04.2020 on 16.02.2021 for the reason that the petitioner was still a minor aged 16 years, there is no bar for her to make a fresh application on attaining



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her age of majority and on the basis of which, the respondents could pass favourable order.

7. In view of the same, I hereby quash the impugned order, dated 16.02.2021 and thereafter, direct the petitioner to submit a fresh application seeking appointment on compassionate ground to the 2nd respondent and on receipt of the same, the 2nd respondent is directed to forward the same to the 1st respondent with immediate effect and the 1st respondent, within a period of eight (8) weeks from the date of receipt of a copy of this order considering the fact that she has attained age of majority and she is entitled to be appointed in a suitable post, may provide the petitioner with an appropriate job by issuance of appointment order.

8. Accordingly, this Writ Petition stands allowed. No costs.

22.09.2023

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

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To

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O/o. The Joint Transport Commissioner,
Chepakkam,
Chennai-600 005.
2. The Regional Transport Officer,
O/o. The Regional Transport Officer,
Theni,
Theni District.



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L.VICTORIA GOWRI, J.

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