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W.P.No.14743 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.14743 of 2012

D. Dhayalan S/o. Late K. Dilli

... Petitioner

vs.

Chennai Metropolitan Water Supply and
Sewerage Board,
represented by Managing Director,
No.1, Pumping Station Road, Chintadripet,
Chennai-600 002.

... 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 relating to the proceedings of the respondent in கடித எண்.செருவா/பமநி/நிம6/23833/2011 dated 10.09.2011, quash the same and to direct the respondent to appoint the petitioner on compassionate ground in the appropriate post.

For Petitioner : Mr. P.N. George Graham

For Respondent : Mr. Krishna Ravindran



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ORDER

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This petition has been filed seeking to issue Writ in the nature of Certiorarified Mandamus calling for the records relating to the proceedings in செருவா/பமநி/நிம6/23833/2011 dated 10.09.2011 and to quash the same and it is also prayed to appoint the petitioner on compassionate grounds in the appropriate post in the respondent's Board.

2. The case of the petitioner is that the father of the petitioner namely K. Dilli worked as field worker and he died on 17.10.1997 while he was working in Kodungaiyur Pumping Station of the respondent's Board. The petitioner is the eldest son and he applied for appointment on compassionate ground on 21.05.1998 along with required documents and was issued with seniority no.616. Further, as per the order of Government, appointment on compassionate grounds were kept abeyance and on enquiry, the petitioner came to know that the respondent had appointed persons upto 720 in the seniority list. Therefore, the petitioner sent a representation dated 03.01.2011 requesting to appoint him for which, the respondent vide order dated 10.09.2011 stated that the application of the petitioner was rejected on the basis of G.O. Ms. No.1579 L & E Dept.



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dated 27.07.1981 as he completed 30 years of age before the death of his father. The age for appointment on compassionate ground was increased from 30 to 35 as per G.O. Ms. No.9 L & E Dept. dated 19.01.1998. The respondent passed the impugned order by suppressing the above Government order. Hence the petitioner may be appointed in the respondent Board in the appropriate post.

3. A counter affidavit has been filed by the respondent stating that the father of the petitioner K. Dilli while working as Field Worker in STP (North) of the respondent Board, died on 17.10.1997. The petitioner herein, who is the eldest son of the deceased, applied for appointment on compassionate ground vide his application dated 21.05.1998, along with his school and legal heir certificates. As the appointments under compassionate ground had been deferred in the respondent Board since 1990, the application received from the petitioner was kept under Sl. No.578. The deferred scheme of compassionate ground appointment was resumed in 2007. Thereafter all the applications kept in the waiting list were scrutinised and on verification of records of the petitioner, it was found that he was born on 29.03.1968 and he attained the age of 30 years 7



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months on the date of death of his father i.e., on 17.10.1997. The Government vide G.O. Ms. No.1579, Employment Service dated 21.07.1981 issued orders that the upper age limit for consideration of appointment under compassionate ground in respect of son shall be 30 years on the date of death of the Government servant. It also clarified in the Govt. Lr. No.2563/N1/82-2, L & E Dept. dated 11.03.1982 that for the purpose of considering the upper age limit, the date of death of the Government servant should be taken into account. Further the Government vide G.O. Ms. No.9, Labour and Employment (Q1) Department dated 19.01.1998 issued orders raising the maximum age limit eligible for consideration for appointment under compassionate ground from 30 years to 35 years with effect from 19.01.1998. Since the petitioner already attained 30 years of age on the date of death of his father, he was not considered for appointment. The application of the petitioner for appointment under compassionate ground was rejected vide letter dated 10.09.2011. However, immediately after death of his father, total amount of Rs.1,54,658/- as death-cum-gratuity had been settled to the petitioner and the other legal heir of the employee. The Government vide G.O. Ms. No.1579, L & E Dept. dated 21.07.1981 has prescribed the rule that the



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legal heir of the deceased employee should apply for appointment before attaining the age of 30 years and also clarified that upper age limit shall be taken into account on the date of death of the Government servant. The Government revised the upper age limit from 30 to 35 vide G.O. Ms. No.9, L & E Dept. dated 19.01.1998 with clear instruction that this order takes effect from the date of this order and the G.O. has no retrospective effect and hence the petitioner's claim of age relaxation cannot be considered under the G.O. Therefore, the Writ petition may be dismissed.

4. Heard both sides'. Perused all the materials available on record.

5. The petitioner's application dated 21.05.1998 requesting to appoint him on compassionate ground, was rejected by the respondent vide order dated 10.09.2011. Aggrieved by the above said order passed by the respondent, the petitioner has come forward with the present Writ petition.

6. The respondent Board had rejected the petitioner's application on the ground that as per G.O. Ms. No.1579, Labour & Employment Department dated 21.07.1981, the petitioner crossed the upper age limit



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prescribed in the above said Government Order, as the petitioner attained the age of 30 years 7 months as on the date of death of his father i.e., 17.10.1997. The date of birth of the petitioner is 29.03.1967.

7. The main contention of the petitioner is that the Government had issued orders raising the maximum age limit eligible for consideration of appointment under compassionate ground from 30 years to 35 years with effect from 19.01.1998 vide G.O. Ms. No.9, Labour & Employment, Department dated 19.01.1998 and only after the above said G.O. dated 19.01.1998, the petitioner has applied for the appointment on compassionate ground i.e, on 21.05.1998. The petitioner was very much within the age limit, but his appointment was denied by the respondent by suppressing the fact of issuance of above said G.O.

8. The learned counsel for the respondent has argued that the appointment of compassionate ground was deferred since 1990 and it was only resumed in the year 2007 and all the death benefits viz., death-cum-gratuity had been settled to the petitioner immediately and the petitioner was not given appointment as his age was barred by the limitation of upper age limit fixed by G.O. Ms. No.1579, L & E Dept dated 21.07.1981.



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9. It is admitted on both sides that the upper age limit for appointment on compassionate ground was 30 years as per Government has issued G.O. Ms. No.1579, L & E Dept., dated 21.07.1981 and subsequently, the upper age limit was raised from 30 years to 35 years vide G.O. Ms. No.9, L & E Dept dated 19.01.1998. The petitioner, after the death of his father on 17.10.1997, has applied for his appointment in the respondent's Board under compassionate ground on 21.05.1998 i.e., only after the issuance of G.O. Ms. No.9, L & E Dept dated 19.01.1998. As per the said G.O., the petitioner was within the age limit. Therefore, the contention of the respondent that the petitioner had crossed the upper age limit of 30 years as on the date of death of his father as per G.O. Ms. No.1579, L & E Dept dated 21.07.1981 cannot be accepted, as the said maximum age limit of 30 years was increased to 35 years as per the G.O. Ms. No.9, L & E Dept dated 19.01.1998 and thereafter only, the petitioner had applied for the appointment on compassionate ground.

10. It is pertinent to note that on receipt of the application of the petitioner, he was given a seniority no.616 and his application was kept by the respondent Board under Sl. No.578. It is the contention of



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the respondent that the scheme of appointment on compassionate ground was deferred since 1990 and it was resumed only in 2007. The petitioner's contention is that he was well within the age limit when he applied for appointment on compassionate ground, but he was given rejection order by the respondent board after a lapse of 13 years i.e., on 10.09.2011, that too only after the reminder letter of petitioner requesting appointment dated 03.01.2011 and the contention of the petitioner is sustainable.

11. That apart, the petitioner's age, as on the date of death of his father was 30 years 7 months. Now, as on date, the age of the petitioner is aged about 57 years. Hence it is not possible for the respondent Board to give appointment to the petitioner at this age of 57 years. It is an admitted fact that there was a ban of appointment between the period of 1990 and 2007. At the same time if the respondent have passed the order of rejection within a reasonable time, the petitioner would have searched for an employment elsewhere suitable to him, but the respondent rejected the application of the



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petitioner dated 21.05.1998 only by an order dated 10.09.2011, i.e., after a lapse of 13 years, for which the petitioner should be compensated by the respondent in order to meet the ends of justice.

12. Therefore, the respondent is hereby directed to pay a compensation of Rs.1 lakh [Rupees One Lakh only] to the petitioner within 6 (Six) weeks from the date of receipt of copy of this order.

13. It is made clear that this order is confined only to the petitioner, considering the facts and circumstances of the case of the petitioner and it will not be a precedent to others.

14. The Writ petition is disposed of with the above directions and there shall be no order as to costs.

15.02.2024

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

To
Chennai Metropolitan Water Supply and
Sewerage Board,
represented by Managing Director,



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No.1, Pumping Station Road, Chintadripet,
Chennai-600 002.

MR. J. SATHYA NARAYANA PRASAD, J.,

(mjs)

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