



W.P.No.29717 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2024

PRONOUNCED ON : 22.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.29717 of 2010

G.Mohana Priya

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Petitioner

Vs.

1.State of Tamil Nadu,
Rep.by the Commissioner & Director,
Fisheries Department,
Chennai – 600 006.

2.The Executive Engineer,
Fishing Harbour Sub-Division,
Thanjavur.

3.The Executive Engineer,
Fishing Harbour Sub-Division,
Nagapattinam – 611 001.

4.Tmt.G.Amudha

...

Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order issued vide Na.Ka.No.31926/M4/09 dated 22.12.2009 issued by the Commissioner, Fisheries Department, Teynampet, Chennai – 6, the first respondent herein and to quash the same and consequently direct the



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respondents 1 and 2 to consider and appoint the applicant in any suitable post on compassionate grounds.

For Petitioner : Ms.S.Jothirani

For R1 to R3 : Mr.D.Gopal
Government Advocate.

For R4 : No appearance

ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order issued vide Na.Ka.No.31926/M4/09, dated 22.12.2009, issued by the Commissioner, Fisheries Department, Teynampet, Chennai – 6 and to quash the same and consequently direct the respondents 1 and 2 to consider and appoint the applicant in any suitable post on compassionate grounds.

2.The learned counsel for the petitioner submitted that petitioner's father R.Gnanasekaran was employed as Junior Engineer in the office of the Fisheries Department. He died on 01.01.1998 while in service. Petitioner's mother predeceased her father on 20.09.1989. At the time of her father's death, she was aged about 11 years and her brother G.Sathiyam was aged about 30 years, but he was suffering from mental depression. Fourth respondent is the second wife of the petitioner's father R.Gnanasekaran. After the death of



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petitioner's father, serious disputes arose between the fourth respondent and petitioner. Fourth respondent obstructed respondents 1 to 3 from disbursing the terminal benefits to the petitioner and other legal heirs. Petitioner's father did not own any movable or immovable properties. Petitioner and her brother were surviving on the mere pension received by their grand mother. After long struggle, part of the terminal benefits were paid to the legal heirs on 13.04.2009. Fourth respondent is working as Secondary Grade Teacher at Panchayat Union Medical School. It is learnt that the family pension had been sanctioned to the fourth respondent vide order No.AG (A&E)/PN P 27/3/G 12 – 368/FP/2008 – 2009/4432,4433, 4434, dated 30.07.2008 in PPO No.FC/555434 FTS. Petitioner's father died leaving her and her brother in harness. Petitioner's brother was suffering from several mental depression. Petitioner and her brother were literally on the streets and suffering hard to eke out their livelihood. Number of representations were sent to respondents 1 to 3 from 23.02.1998 onwards seeking compassionate appointment. Without considering any of the representations, petitioner's representation was rejected and the impugned order in Na.Ka.No.31926/M4/09, dated 22.12.2009 was passed. In the said circumstances, this writ petition is filed.



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3.It is the submission of the learned counsel for the petitioner that the rejection of the petitioner's representation for compassionate appointment on the ground that the application was not submitted within a period of three years from the date of the death of the father is not correct for the reason that a minor cannot be appointed in a Government service. Only after obtaining majority, one can apply for compassionate appointment. Admittedly, petitioner was minor at the time of the death of her father and therefore, her representation after obtaining majority, seeking compassionate appointment should be favourably considered.

4.That apart, he submitted that petitioner's brother had already submitted the representation immediately after the death of their father seeking benefits due to his father, on account of the death of their father while in service. That application was sent on 05.05.1998 within a period of three years from the date of death of their father. Therefore, the claim that compassionate appointment was not sought for as per the prescribed rules cannot be accepted.

5.In support of the submission of the learned counsel for the petitioner that a minor can seek compassionate appointment after attaining majority, the



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following judgments are relied.

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(i) *Rajesh Nath Vs. The State of Assam and 8 others in WP(C)/3290/2020.* The relevant portion of order is extracted hereunder:

13. But in the instant case, the father of the petitioner died on 27.07.2009 at which point of time, the petitioner was 16 years few months and therefore was short of being a major by about one year and few months. Further, immediately upon attaining majority, the petitioner had submitted the application for compassionate appointment on 28.10.2011. The factual narration in the instant case also satisfies the requirement that the application of the petitioner was made as expeditiously as possible as the circumstance warranted and in the given circumstance, no further delay is noticed in making the application although technically speaking, it may not have been made within the period of one year as prescribed for such application.

(ii) *R.Sridevi Vs. The Secretary to Government and 2 others, in*

W.P.No.9528 of 2008. The relevant portion of order is extracted hereunder:

10. In the case of [G.Vijayaraghavan vs. General Manager \(P\) Indian Bank](#) (2000 (3) LLN 625), this court has directed the Indian Bank to consider the



*claim of the petitioner therein, who made an application on attaining majority for employment on compassionate ground. The principle laid down in the said decision is that irrespective of settlement of full term service, gratuity and other benefits, the eligible person can claim appointment on compassionate grounds. Further, in the case of **Balbir Kaur vs. Steel Authority of India Ltd.** (2000 (6) SCC 493), the legal proposition is that in the case of appointment, considering the social and economic justice as enshrined in the Constitution, denial of deserving cases are liable to be set aside. It is further observed therein that the purpose of providing compassionate ground appointment to a son or daughter or a near relative of the deceased government servant is to render assistance to the family, which is found in indigent circumstances. The Supreme Court, in the case of **Syed Khadim Hussain vs. State of Bihar and others** ((2006) 9 SCC 195), holding that in the rules framed by the State, there is no specific provision as to what should be done in case the dependants are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application, allowed the case of the petitioner for*



compassionate appointment.

11. In a similar circumstance, in the case of *M.Uma vs. Chief Engineer (Personnel), TNEB, Chennai*, (2010) 7 MLJ 644, wherein the petitioner's application was rejected on the ground that she has not submitted the same within three years, this court, taking into account the indigent circumstances of the family directed the respondents therein to consider the claim of the petitioner seeking compassionate appointment without reference to the objection raised in the impugned order. Also are cases in *Mohanambal vs. The Director, Land & Survey Department* and *R.Prasath vs. The Secretary, Labour and Employment Department* and others, wherein, this court has held that the application for appointment on compassionate grounds is not to be rejected on the ground that it was filled after a lapse of time and the application is to be considered on its own merits.

12. It is also worth referring to a decision reported in AIR 1989 SC 1976 in the case of *Sushma Gosain and others vs. Union of India and others*, wherein, the Supreme Court, on the principle of considering the mitigating circumstances and hardship, has held as follows :



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"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant."

13. Of course, there cannot be any reservation of vacancy till such time the petitioner becomes a major after a number of years. In the case on hand, since the sudden death of the government servant had left her family in penury and without any means of livelihood, I feel it justified that the petitioner can be accommodated in any suitable post as per her qualification, as against the post held by her father.

6. In reply, the learned counsel for the respondent submitted that as per the clarification letter issued by the Secretary to the Government in G.O.No.42-Labour & Employment, dated 12.03.2007 and Govt.letter No.202 – Labour and Employment, dated 08.10.2007, any application for



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compassionate appointment should be submitted within a period of three years from the date of death of the Government Servant. In the case before hand, such an application was not submitted by petitioner or her brother. Petitioner applied for appointment under compassionate ground on 29.06.2006 and 07.05.2007. These applications were rejected by the Chennai, Director of Fisheries Department, stating that the application should have been sent within a period of three years from the date of death of the Government Servant. Though petitioner's brother G.Sathiyar had given application on 28.02.1998, it could not be considered for the reason that the second wife of deceased R.Gnanasekaran was in Government service. Therefore, the application of petitioner seeking compassionate appointment was rightly rejected. He pressed into service the judgment of the Hon'ble Supreme Court in ***Commissioner, Madurai Corporation and Another Vs. G.Vasuki Bharathi*** reported in ***2022 SCC Online Mad 4510*** for the proposition that appointment on compassionate grounds has to be strictly followed in accordance with the relevant Government scheme that has been framed by the employer and any deviation is not permissible. The compassionate appointment scheme can be extended to the eligible member of the family and not to an ineligible person. Scheme has been framed to provide employment assistance as and when the



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son or daughter of the deceased employee attains majority. The department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority.

7.Considered the rival submissions and perused the records.

8.Before going into the merits of the case, certain basic facts have to be looked into. It is not in dispute that petitioner's father R.Gnanasekaran was working as Junior Engineer in the office of the Fisheries Department at the time of his death on 01.01.1998. His first wife predeceased him on 20.09.1989. It appears that he married the fourth respondent. It is not known when the marriage had taken place, especially, as to whether the marriage between R.Gnanasekaran and fourth respondent had taken place after 20.09.1989 or prior to 20.09.1989. It is claimed in the petition that the attitude of the fourth respondent was the sole reason because of which R.Gnanasekaran had ended his life. There is no love last between petitioner, her brother and fourth respondent and the dispute between them was long lasting. There appears a rival claim to the terminal benefits between petitioner, her brother and fourth respondent. Therefore, by way of appeasing



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both, family pension was sanctioned to the fourth respondent and death gratuity was given to petitioner and her brother.

9. What is to be seen here is that fourth respondent was already in Government service as a Teacher. She was not taking care of petitioner who was a minor at the time of her father's death. It is claimed that petitioner's brother is person of mentally disturbed. Therefore, there is no question of him claiming compassionate appointment. It is admitted in the counter that petitioner's brother had claimed compassionate appointment on 28.02.1998. His request was rejected on the ground that second wife, fourth respondent was employed in Government service. In that case, respondent ought to have denied the family pension to fourth respondent. Family pension should have been ordered to petitioner. That was not done in this case. Second wife had not taken care of petitioner and her mentally deprived brother. Petitioner is living the life of penury and she in indigent circumstances. It is expected that respondent should have sympathetically considered the case of the petitioner. Rejection of her claim for compassionate appointment on the ground that application was not filed within three years from the date of the death of the father of the petitioner is not just and cannot be appreciated.



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10. It is seen from the judgment relied by the learned counsel for the petitioner in ***R.Sridevi Vs. The Secretary to Government and 2 others, in W.P.No.9528 of 2008*** that in case of a minor, considering the indigent circumstances in which they are placed, it was held that the request for compassionate appointment cannot be rejected on the ground that the request was made after attaining majority and with a delay over three years. In the case before hand, petitioner submitted the application within a period of two years of attaining majority and therefore, the application should have been favourably considered.

11. In this view of the matter, the impugned order passed in Na.Ka.No.31926/M4/09, dated 22.12.2009, is set aside and respondents 1 to 3 are directed to consider and appoint the petitioner in any suitable post on compassionate ground, within a period of three months, from the date of receipt of a copy of this order.



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12. Accordingly, this Writ Petition stands allowed. Consequently,

connected Miscellaneous Petition, if any, is also closed. No costs.

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

1.State of Tamil Nadu,
Rep.by the Commissioner & Director,
Fisheries Department,
Chennai – 600 006.

2.The Executive Engineer,
Fishing Harbour Sub-Division,
Thanjavur.

3.The Executive Engineer,
Fishing Harbour Sub-Division,
Nagapattinam – 611 001.

G.CHANDRASEKHARAN, J.

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Pre-delivery Order in
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