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W.P.No.30551 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.30551 of 2012

P.Prakash

...Petitioner

Vs

1.The Director General of Police,
Office of the Director General of Police,
Santhome,
Chennai.

2.The Commissioner of Police,
Pantheon Road,
Egmore,
Chennai – 600 008.

3.The Joint Commissioner of Police,
Chennai South,
Office of Commissioner of Police,
Pantheon Road,
Egmore,
Chennai – 600 008.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to letter Na.Ka.N.Pa.B-1/K.M/298/13788/2012 dated 14.07.2012 on the file of third respondent and quash the same as illegal and further direct the respondents to consider the petitioner for appointment on compassionate grounds on merits without insisting for Court order.



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For Petitioner :Mr.Adinarayana Rao

For Respondents :Mr.M.Rajendran, Additional Govt. Pleader

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ORDER

The Writ Petition has been filed calling for the records pertaining to letter Na.Ka.N.Pa.B-1/K.M/298/13788/2012 dated 14.07.2012 on the file of third respondent and quash the same as illegal and further direct the respondents to consider the petitioner for appointment on compassionate grounds on merits without insisting for Court order.

2.The case of the petitioner is that petitioner's father N.Prabhakaran was working as Police Constable in Tamil Nadu Police Department. On 31.10.1990, he left home stating that he was going to the Police Station. Thereafter, his whereabouts is not known. Petitioner's mother gave a complaint to J-1, Saidapet Police Station on 07.11.1990. After taking efforts to find him, a man missing complaint was registered in Crime No.1850 of 1990. After investigation, it was concluded that the case is undetectable. Till date, his father's whereabouts is not known.

2.1.In 2002, a Civil case in O.S.No.4031 of 2002 was filed by the petitioner, along with his mother and brother to receive the service benefits of



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his father N.Prabhakaran, on the ground that, he is presumed to be dead.

Petitioner's mother applied for pension and it was sanctioned by G.O.Ms.No.149, dated 07.02.1994 presuming that his father as dead.

2.2.In 2002, petitioner applied for job in respondent's department under compassionate ground. He was advised to get necessary orders from the Court. The suit in O.S.No.4031 of 2012 was disposed and it was concluded that plaintiffs are entitled to the death benefits of N.Prabhakaran. The Civil Court had directed the respondent to provide all benefits to the plaintiff. Petitioner has been waiting for more than 10 years to get an employment on compassionate ground, but he is not provided with employment, necessitating filing of this Writ Petition.

3.Learned counsel for the petitioner submitted that, in proceedings Rc.No.P6/205/206997/92 dated 06.05.1996, the Death-cum-Retirement Gratuity was paid to the petitioner, petitioner's mother and his brother. He submitted his application seeking employment on compassionate ground on 19.04.1999. The Commissioner of Police, Chennai in his proceedings in Na.Ka.No.Pa.OPa.3(2)/174/20675/55 dated 30.06.1999, directed him to produce the necessary documents such as Legal Heirship certificate,



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Application seeking employment certificate, Educational qualification certificates and other relevant records/certificates showing the indigent circumstance of the family. The Tahsildar, Mambalam, in his communication dated 12.08.1999 in Pa.Mu.E.1/30323/99 to the Commissioner of Police, Chennai, gave a report stating that, petitioner was aged 20 years and that there is no income except the family pension of Rs.1350/- to the family. He was directed to get orders from the competent Civil Court seeking declaration of his father's death under Section 107 and 108 of Indian Evidence Act and then only his request for compassionate ground appointment would be considered, through the letter of Commissioner of Police in Na.Ka.No.799/93356/Pa.Pe3(2)/2003, dated 16.03.2004. In a suit filed in O.S.No.4031 of 2012, there is a categorical finding that petitioner's father N.Prabakharan presumed to be dead, under Section 108 Indian Evidence Act. As legal heir of deceased N.Prabhakaran, he is entitled to the appointment in a suitable post under compassionate appointment. His mother and brother have no objection for his appointment.

4.In reply, learned Additional Government Pleader submitted that the suit in O.S.No.4031 of 2012 was filed for the relief of declaration and for consequential mandatory direction to the defendants to pay the monetary



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benefits to the plaintiffs and for costs. The declaration sought for the relief that N.Prabhakarn presumed to be dead. However, the suit was dismissed insofar as declaration is concerned. When the relief of declaration that N.Prabhakaran was presumed to be dead was dismissed, it cannot be certainly concluded that he is no more and dead. He has not submitted his application in time. This Writ Petition was filed with a huge delay. Thus, he submits that, petitioner is not entitled for the relief and seeks dismissal of this Writ Petition.

5.Considered the rival submissions and perused the records.

6.From the facts obtained, it is not in dispute that petitioner's father N.Prabhakaran went missing from home on 31.10.1990. The criminal complaint was registered in this regard in Crime No.1850 of 1990 on the file of Saidapet Police Station. The efforts made by Investigating Officer to trace the whereabouts of N.Prabhakaran went in vain. Till now, his whereabouts are not known. Petitioner along with his mother and brother filed O.S.No.4031 of 2012, seeking relief of declaration that his father was presumed to be dead and for consequential mandatory direction to the defendants to pay the monetary benefits to the plaintiffs and for costs. It is true that, the suit was dismissed sofar as relief of declaration is concerned. In respect of relief of disbursement



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of terminal benefits, it was decreed. Though the learned Judge dismissed the

suit for declaration, there was a clear and categorical finding that,

N.Prabhakaran presumed to be dead under Section 108 of Indian Evidence Act.

It is not in dispute that, petitioner, his mother and brother had been disbursed

with all the monetary benefits, which is liable to be paid on the death of

Government servant. It is also not in dispute, petitioner was aged 20 years when

he submitted his representation for compassionate appointment on 19.04.1999.

It is also seen from the additional typed set of papers produced that, he again

submitted his representation on 19.07.2006, after the disposal of the suit in

O.S.No.4031 of 2012 on 17.10.2003. The Tahsildar, Mambalam has given a

certificate stating that, there is no one employed in petitioner's family in

Government or private sector. Petitioner and his family members were living

with family pension of Rs.1350/- and there is no other income available to them

for sustenance. The indigent circumstances of the petitioner and his family

members was clearly established. The application seeking compassionate

appointment was filed in time, one in 1999 and other one is 2006.

7.Merely because, there is a delay in filing the Writ Petition, the just

claim of the petitioner cannot be negated. Petitioner waited for a long time,

for employment on compassionate ground, and then when no positive order was



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passed, he approached this Court.

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8.In the facts and circumstances of this case, this Court is of the view that, delay in approaching this Court cannot be held against the petitioner. Therefore, the letter Na.Ka.N.Pa.B-1/K.M/298/13788/2012 dated 14.07.2012 on the file of third respondent is quashed.

9.In fine, this Writ Petition is allowed, with a direction to the respondents to provide petitioner a suitable employment, on the basis of his qualification on compassionate ground, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition, if any, is closed. No costs.

29.04.2024

Index:Yes/No
Speaking order/Non-speaking order
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G.CHANDRASEKHARAN, J.

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