



Writ Appeal No.1818 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1818 of 2021
CMP.No.11431 of 2021**

1.State of Tamil Nadu Rep., by its Secretary,
Municipal Administration and Water Supply Department,
Fort St., George, Chennai – 600 009.

2.Director of Local Fund Accounts,
IV Floor, Kuralagam,
Chennai -108. ... Appellants

Vs

Mohammed Rizwan ... Respondent

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent
against the order dated 03.09.2019 made in W.P.No.188 of 2010.

For Appellants :Mr.M.Bindran AGP

For Respondent :Mr.P.S.Siva Shanmuga Sundaram



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JUDGMENT

(Judgment of the Court was made by K.KUMARESH BABU.,J.)

Heard Mr.M.Bindran, learned Additional Government Pleader appearing for the respondents 1 &2 and Mr.P.S.Siva Shanmuga Sundaram, learned counsel appearing for the respondent.

2. This Intra-Court Appeal had been preferred by the Government challenging the order of the learned Single Judge, wherein the learned Single Judge had set aside the order of rejection passed by the second appellant herein and had directed the appellants to give appointment to the respondent herein.

3. Mr.M.Bindran, learned Additional Government Pleader appearing for the appellants would submit that the father of the respondent died in harness in July 2003. The widow of the deceased had originally submitted an application seeking compassionate appointment to her elder son and the same was under consideration. Thereafter, a further



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representation was given on 05.12.2008, seeking to give the said compassionate appointment to her second son. He would submit that the period of three years came to be counted from the death of the Government employee would expire on 12.07.2006 and therefore, the application made beyond the said period could not be considered and therefore, the same was rejected by the second appellant.

4. He would further submit that the learned Single Judge had taken into account the ban that was prevalent in the State of Tamil Nadu for making any appointment and therefore, had calculated the said period of three years from the date of lift of the ban and had concluded that the said application was well within the period of three years and therefore, had set aside the order. He would submit that on that aspect even though there was a ban on the appointment at that point of time, but however, there was no ban on an application being made on the ground of compassionate appointment. He would further submit that even assuming that according to the learned Single Judge, the application was well within the time, the learned Single Judge ought not to have issued a positive direction to appoint the respondent for the reason that the eligibility of the family would have to



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be first assessed and the right of the respondent to be appointed would also have to be gone into. In that context, he would pray this Court to interfere with the order passed by the learned Single Judge and set aside the same.

5. On the other hand, the learned counsel appearing for the sole respondent would submit that the application had been validly made immediately after the death of the Government employee and the same was pending consideration with the Government. All that has been made in the year 2008, the widow of the deceased was seeking to grant the said compassionate appointment to the respondent, who is the second son of the deceased. In that context, he would submit that it is an admitted case that the mother of the respondent, had made an application within the period of three years of date of death of the deceased employee and subsequently, a further representation was made in the year 2008, was only to substitute the respondent in the place of his brother. Therefore, he would submit that there was no error in the order of the learned Single Judge, which requires no interference of this court.



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6.We have considered the submissions made by the learned counsels appearing on either side and perused the materials placed on record before this Court.

7.It is an admitted case that on the death of the father of the respondent an application for appointment on the ground of compassionate had been made by the respondent's mother seeking compassionate appointment to her elder son, who is the elder brother of the respondent herein. The said application has not been disposed of by the Department. Pending the said application, a further application had been made to consider the case of the respondent, who is the second son of the deceased for compassionate appointment. An application for appointment on the ground of compassionate appointment should be given within a period of three years, whereas in the case on hand such an application had been made within the said period. Even though, the wife of the deceased had originally made a request within the time prescribed by way of an application to her elder son, had now sought to provide compassionate appointment to her



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second son/respondent herein. Therefore, we are of the view that the present application is only a continuation of the first application and therefore, the order which was impugned in the Writ Petition on the aforesaid reason also would have to suffer apart from the reason assigned by the learned Single Judge.

8. But however, coming to the positive direction issued by the learned Single Judge, it is to be seen that there is a procedure in considering such an application for appointment on the ground of compassionate appointment including a finding of fact of the penurious circumstances in which the deceased family was put in on the death of the deceased employee. Such an enquiry had not been made in the present case and without such a finding of penury circumstances or even a finding given to that effect, the learned Single Judge had issued the positive direction which ought not to have been made and the Department should have only been directed to consider the case of the respondent by treating the said application as within time. In such circumstances, we are inclined to set aside only the positive direction issued by the learned single Judge to appoint the re-



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spondent in the Department. In all other aspects, the order is sustained.

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9.For the aforesaid reasons, the Writ Appeal is partly allowed by setting aside only to the positive direction issued in the impugned order. As a sequel, the second appellant is directed to consider the case of the respondent for compassionate appointment and if he satisfies with all the requirements as envisaged for grant of compassionate appointment, then his case can be considered. Such exercise shall be carried out by the second appellant within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

(R.S.K.,J.)

(K.B., J.)

22.02.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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