



WEB COPY



W.A.No.3670 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2024

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR
AND

THE HONOURABLE MR JUSTICE C. SARAVANAN

W.A.No.3670 of 2024

P.Saranya

... Appellant

Vs

1. The Secretary to Government
Revenue Department, Fort St. George
Chennai – 9.

2. The District Collector
O/o. The District Collector
Coimbatore – 641 018.

3. The Tahsildar
Coimbatore North Taluk
Coimbatore.

... Respondents

For the Appellant : Ms.Selvirejesh

For the Respondents : Mr.M.Alagu Goutham
Government Advocate

Prayer: Appeal filed under Clause 15 of the Letters Patent, against
the order dated 05.06.2024 made in W.P.No.31869 of 2023.

JUDGMENT

(Judgment of the Court was authored by R. SURESH KUMAR, J.)

This intra-Court appeal has been filed against the order
passed by the Writ Court dated 05.06.2024 made in W.P.No.31869
of 2023.



W.A.No.3670 of 2024

2.1. The appellant's father was working as an Office Assistant in the respondent Department and he died in harness while he was in service on 12.12.2001. Immediately, an application was made seeking compassionate appointment to the first daughter of the deceased employee, namely one *Tmt.C.P.Sinduja*. However, for nearly about seven to eight years, no orders have been passed by the respondents and the application has been kept pending.

2.2. However, in the year 2008, the job seeker namely *Tmt.C.P.Sinduja*, who is the first daughter of the deceased employee, got married. Once she was married, she might not be eligible based on the Rules which was in vogue at that point of time, which has been subsequently modified. In fact, the wife of the deceased employee, who is the mother of the job seeker, made an application on 16.09.2009 seeking compassionate appointment for the younger daughter of the deceased employee namely *Tmt.P.Saranya*, that is the appellant/writ petitioner.

2.3. After the said application was made, the second respondent on 11.09.2012 sought certain particulars, including No Objection Certificate to be given by all the legal heirs of the deceased employee, for consideration of the application submitted



W.A.No.3670 of 2024

on behalf of the first daughter *Tmt.C.P.Sinduja* for compassionate appointment.

2.4. Aggrieved over the said asking of particulars as well as the No Objection Certificate from the other legal heirs of the deceased employee, thereby indicating that the employer is going to consider the application submitted by the first daughter *Tmt.C.P.Sinduja*, as she might not get the job, since at that time she was not eligible as she got married in the year 2008 itself, the mother of the present appellant approached this Court by filing W.P.No.7495 of 2013. The said writ petition was allowed by the learned Single Judge of this Court on 28.11.2014, whereby, the learned Single Judge has passed the following orders:

"7. The facts are not in dispute. The first representation / application was made within time and even in the impugned order, it has not been stated that the said application was belated. The records produced by the petitioner would go to show that the first application was responded, only after the second representation was made. However, by misconception of fact, the impugned order has been passed, by taking into consideration the first application made by the first applicant, C.P.Sinduja. The petitioner has specifically stated in the affidavit filed in support



WEB COPY



W.A.No.3670 of 2024

of this petition that the subsequent representation was made on 16.09.2009, seeking employment for her second daughter (P.Saranya) by enclosing No Objection Certificate of her first daughter (C.P.Sinduja).

8. Considering the same, this Court is of the view that the impugned order is liable to be set-aside and accordingly, the same is set-aside. This writ petition stands allowed. The respondents are directed to consider the case of the petitioner's second daughter, P.Saranya, and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is directed to produce all the relevant documents, pertaining to the qualification, etc., of her second daughter, P.Saranya, along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected MPs are closed.

2.5. Despite the said order being passed, it seems that on 18.11.2016, by relying upon the Government Order made in G.O.Ms.No.42, Labour and Employment (Q1) Department dated 12.03.2007, the plea of the petitioner appellant was not considered.



W.A.No.3670 of 2024

WEB COPY

2.6. Insofar as the order passed by the Writ Court, allowing the said writ petition on 28.11.2014, is concerned, the said order has become final, where no appeal has been preferred by the respondent Department. Anyhow, belatedly on 20.03.2020, the respondent, that is the second respondent District Collector, has passed an order rejecting the plea of the present appellant writ petitioner seeking compassionate appointment by citing the reason that the compassionate appointment originally sought by the legal heir, that is the first daughter of the deceased employee, cannot be changed or altered to any other legal heirs of the deceased employee, as presently they have sought compassionate appointment for the second daughter of the deceased employee.

2.7. This is the only reason stated in the order dated 20.03.2020 and insofar as the other formalities are concerned, there has absolutely been no quarrel that the appellant/writ petitioner is otherwise eligible and entitled to seek compassionate appointment. Therefore, challenging the said order dated 20.03.2020, the appellant/writ petitioner approached this Court for the second time and filed the writ petition in W.P.No.31869 of 2023.



W.A.No.3670 of 2024

2.8. The said writ petition, having been considered, was dismissed by the learned Single Judge through the impugned order dated 05.06.2024. Aggrieved thereby, the present writ appeal has been preferred.

3. We have heard *Mr.M.Alagu Goutham*, learned Government Advocate for the respondents and *Ms.Selvirejesh*, learned counsel for the appellant/writ petitioner and have gone through the impugned order passed by the Writ Court.

4. Insofar as the reasons that have been stated in the impugned order before the Writ Court dated 20.03.2020 are concerned, assuming that even they relied upon G.O.Ms.No.42 or the Government Letter dated 18.11.2016, insofar as the eligibility and entitlement of the appellant/writ petitioner to get compassionate appointment is concerned, absolutely, there has been no quarrel. The reason being that, the appellant/writ petitioner is also one of the legal heirs of the deceased employee and the first daughter, though originally sought job on compassionate ground, as the application has been kept pending for nearly about eight years and in the year 2008, as she got married, she became ineligible in view of the then prevailing Rule. Naturally, the next legal heir of the



W.A.No.3670 of 2024

deceased employee could be considered, for which, an application also has been given on 16.09.2009.

5. The said application shall be only taken into consideration as the continuing process of the original application that has been made seeking compassionate appointment immediately after the death of the employee. In fact, after making such application on 16.09.2009, on 11.09.2012, the respondents have come forward to consider the application seeking compassionate appointment on behalf of the first daughter, namely, *Tmt.C.P.Sinduja*, of the deceased employee. This itself shows that the respondents, in total non-application of mind, has sought such particulars. Therefore, it triggers them to come before this Court by filing the writ petition, which was allowed by the learned Single Judge through the order dated 28.11.2014.

6. The learned Single Judge, in fact, allowed the said writ petition by the said order, as against which since no intra-Court appeal admittedly has been filed, the import of the said order has become final. When that being so, on what basis the issue has been kept pending till 2020, that is till passing of the order impugned before the Writ Court dated 20.03.2020, is not supported by any



W.A.No.3670 of 2024

reasons or materials.

WEB COPY

7. In this context, the conclusion reached by the learned Single Judge through the impugned order herein at paragraph 8 to state that the said order passed by the Writ Court had not been considered on merits and rendered findings that the appellant/writ petitioner is entitled to ask for compassionate appointment is without considering the merits of the case in proper perspective by the Writ Court through the present impugned order. Therefore, we are not in agreement with the said view expressed by the learned Single Judge through the impugned order, especially paragraph 8 of the order, brushing aside the earlier order passed by the Writ Court dated 28.11.2014.

8. Moreover, if we look at G.O.Ms.No.42 dated 12.03.2007 of the Labour and Employment (Q1) Department, several guidelines have been either reiterated from the earlier guidelines or some new guidelines have been given. No such guidelines speak about the non-eligibility of the next legal heir if the first legal heir has not been considered for compassionate appointment. Even in Clause 2.2 of the said G.O.Ms.No.42, it has been made clear that the *"appointment on compassionate grounds are being given to the*



W.A.No.3670 of 2024

dependent of the deceased Government servant, who died in harness. The existing guidelines with regard to the dependents shall be continued". Therefore, the dependents of the deceased employee includes all the legal heirs who are really dependent upon the deceased employee. If that being so, if not the first daughter of the deceased employee, as she got married after eight years of making the application and as the application was not considered, the choice would go to the next legal heir, who is the second female legal heir of the deceased employee, who is none other than the appellant/writ petitioner.

9. Therefore, even as per the G.O.Ms.No.42, absolutely, there has been no plausible reason for the respondents to reject the plea of the appellant/writ petitioner as they have done through the order dated 20.03.2020. These aspects have not been considered in a proper perspective by the learned Single Judge while disposing the writ petition.

10. Further to state that insofar as the reason of efflux of time is concerned, in any compassionate appointment, for instance, if the present case is taken up for illustration, the employee died in the year 2001, immediately an application seeking compassionate



W.A.No.3670 of 2024

appointment was made on 23.09.2002, but it has not been given a *quietus* till 2008 when the job seeker got married. Thereafter, further application had been made seeking appointment for the second daughter, that is the appellant/writ petitioner. Even that has not been considered and cleared despite the orders having been passed on 28.11.2014 by this Court. Ultimately, in 2020, that is after 19 years of the death of the Government employee, since an order has not been passed, we cannot now see and come to a conclusion as to what is the present position of the family of the Government employee.

11. If any Government employee dies in harness and if no compassionate appointment or no support is given by the employer or the Government or the Organization concerned where the employee was working, it does not mean that the Family of the deceased Government employee would completely be ruined due to the efflux of time. That means, even though they may not be enjoying the same standard of living which they have enjoyed during the lifetime of the Government employee, certainly, they would have been surviving all these years by taking any alternative jobs or at least they might have prolonged the life of struggle to meet both ends. If that kind of situation is taken into account to



W.A.No.3670 of 2024

state that after ten years or fifteen years or twenty years, the family cannot be considered to be the family of indigent circumstances or penurious circumstances for the purpose of compassionate appointment, such kind of reasons could be attributed in any application which is made seeking compassionate appointment.

12. Therefore, the reason of efflux of time cannot be put against the job seeker on compassionate appointment unless and until such an efflux of time has occurred due of the mistake committed by the side of the job seeker or the deceased employee's legal heir or dependents. In the case in hand, the delay of nearly two decades has been caused only by the employer by citing one reason or the other and in respect of some of the reasons, they have cited, of course belatedly, after several years. These reasons would not stand in the legal scrutiny because of the reasons which we have discussed.

13. Therefore, looking from an other angle, the order impugned before the Writ Court dated 20.03.2020 would not survive and therefore, the same is liable to be interfered with and is to set aside. However, this position has not been properly



W.A.No.3670 of 2024

considered by the Writ Court and also the reasons cited by the learned Single Judge with regard to the efflux of time, for the discussions we have made *supra*, is not appealing to us.

14. Therefore, for all these reasons, the impugned order passed by the Writ Court is liable to be interfered with. Consequently, the impugned order before the Writ Court is also liable to be set aside. Resultantly, the following orders are passed:-

(i) The impugned order is set aside and as a sequel, the impugned order before the Writ Court dated 20.03.2020 also is set aside. Consequently, there shall be directions to the respondents, especially the second respondent, to consider the application made by the appellant/writ petitioner and provide her suitable job in commensurate with the Educational qualification in any job of Grade C or Grade D immediately, that is within a period of two months from the date of receipt of a copy of this order.

(ii) We are inclined to give such positive directions because there has already been two rounds of



WEB COPY



W.A.No.3670 of 2024

litigation. Therefore, we do not once again want to place the appellant/writ petitioner in tender hook, as to what decision would be taken by the employer in disposing the application of the appellant/writ petitioner if only a direction is given to consider and pass orders. Therefore, such positive direction, since became inevitable, is given in this writ appeal.

15. The writ appeal, accordingly, stands allowed. There shall be no order as to costs. Consequently, C.M.P.No.28931 of 2024 is closed.

(R.S.K, J.) (C.S.N, J.)
19.12.2024

Neutral Citation : Yes/No

drm

To:

1. The Secretary to Government
Revenue Department, Fort St. George
Chennai – 9.
2. The District Collector
O/o. The District Collector
Coimbatore – 641 018.
3. The Tahsildar
Coimbatore North Taluk, Coimbatore.



WEB COPY



W.A.No.3670 of 2024

R. SURESH KUMAR, J.
AND
C. SARAIVANAN, J.

(drm)

W.A.No.3670 of 2024

19.12.2024