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W.A.No.3643 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.12.2024**

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THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE MR JUSTICE C. SARAVANAN

Writ Appeal No.3643 of 2024

C.Selvam

...

Appellant

Vs

1.The Government of Tamil Nadu
Rep. by the Secretary to Government,
Environment and Forest Department,
Fort St. George, Chennai-600009

2.The Principal Chief Conservator of Forests
(Head of Forest Force) Velachery Main Road,
Guindy, Chennai-600032

3.The District Forest Officer
Thiruvannamalai.

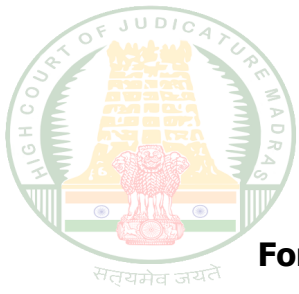
4.The Conservator of Forests
Vellore-9.

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Respondents

Prayer:

Writ Appeal under Clause 15 of the Letters Patent to set aside the order dated
02.09.2024 passed in Writ Petition No.25661/2024.



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For Appellant : Mr.S.Mani

For Respondents : Mr.C.Selvaraj
Additional Government Pleader – for R1 to R4

JUDGMENT

(Judgment of the Court was delivered by **R. Suresh Kumar, J.**)

This intra Court appeal has been directed against the order passed by the Writ Court dated 02.09.2024 made in Writ Petition No.25661/2024.

2. The appellant's father was originally working in Government service, who died in harness on 24.05.2005. Therefore, the appellant's mother was given compassionate appointment and she was appointed as Cook on compassionate ground on 03.08.2016, where she was working till 25.02.2023, the date on which she became medically invalidated and retired from service.

3. At the time when she was medically invalidated on 25.02.2023, she was having at least five years of service left. However, after she became medically invalidated, the present appellant who is the son of the said medically invalidated employee, had filed an application on 15.05.2024 seeking compassionate appointment. The said application having been considered, was rejected by the



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second respondent ie., the Principal Chief Conservator of Forests vide his proceedings dated 02.07.2024. The ground on which the said order of rejection was passed by the second respondent is, as per Rule 6 of the Rules called the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules 2023 (In short 'the Rules'), the upper age limit was fixed at 40 years on the date of making the application seeking for compassionate appointment.

4. However, when the appellant made the application seeking compassionate appointment, he had completed 40 years, 1 month and 11 days. He was over aged by 1 month and 11 days. His application was rejected through the impugned order of the second respondent on 02.07.2024.

5. Against such rejection order, he had preferred an appeal before the first respondent on 06.08.2024 and when the said appeal was pending, he had approached the writ Court seeking for a writ of Mandamus to give a direction to the second respondent as well as the first respondent to consider the request of the petitioner for seeking compassionate appointment by deciding the appeal dated 06.08.2024, whereby the writ petitioner / appellant had sought for relaxation of Rule 6 by accepting 1 month and 11 days overage of 40 that has been fixed under Rule 6 of the said Rules.



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6. The said writ petition having been considered, was rejected by the learned Judge of this Court by the impugned order dated 02.09.2024, whereby the learned Judge has taken a different view by stating that compassionate appointment cannot be perpetuated. To have a better understanding of the impugned order, the relevant portion of the order is extracted hereunder:

“ 5. In the considered view of this Court, there is no rule of perpetuity to appoint persons belonging to the same family on compassionate ground. An appointment on compassionate ground is provided in case of sudden demise of a member of the family, who was earning and taking care of the family. Already, the mother of the petitioner was provided with appointment on compassionate ground. She retired from service in the year 2023. Now, the baton cannot go into the hands of the petitioner and the petitioner cannot seek for compassionate appointment. Therefore, the relief sought for by the petitioner is totally unsustainable and cannot be granted. ”

7. Aggrieved by the same, the present appeal has been preferred.

8. Heard the learned counsel appearing for the appellant and the learned Additional Government Pleader appearing for the respondents 1 to 4.



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9. Insofar as the compassionate appointment is concerned, how it should be dealt with has been clearly stated in G.O.Ms.No.33, Welfare and Skill Development (Q1) Department dated 08.03.2023, wherein, under Rule 6 no doubt the upper age limit has been prescribed as 40 years on the date of making the application and in the present case admittedly the appellant / petitioner has crossed 40 years by 1 month and 11 days.

10. Insofar as this 1 month and 11 days is concerned, whether it can be relaxed or condonable is concerned, such power is vested with the Government under Rule 17 of the very same Rules, where, if the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reason to be recorded in writing, relax any of the provisions of these rules with respect to any person where the operation of these rules causes any hardship, provided that educational qualification prescribed for appointment to any post shall not be relaxed.

11. Here in the case in hand, relaxation sought for is only 1 month and 11 days and the power is vested with the Government to relax the said over age under Rule 17 of the Rules. Therefore, the reason that has been cited by the learned



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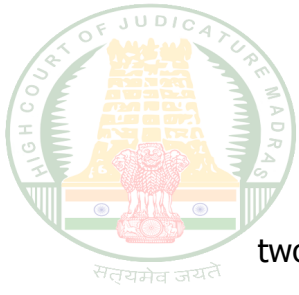
Judge in rejecting the plea of the appellant / petitioner through the impugned order

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as has been stated in Para 5, which we have extracted herein above, may not be justifiable for the simple reason that the scheme of compassionate appointment is now being dealt with only under the Rules as quoted herein above. A provision for relaxation for giving such relaxation by the Government in deserving cases is available under the said Rules. The plea sought for by the writ petitioner by way of a Mandamus to consider his appeal dated 06.08.2024 could have been considered and such a direction given by the learned Judge through the impugned order. Therefore, to that extent we are inclined to interfere with the impugned order.

12. Accordingly, the impugned order is set aside this writ appeal is disposed of in the following terms:

- The impugned order dated 02.09.2024 in W.P.No.25661 of 2024 is set aside.
- As a sequel, there shall be a direction to the respondents to consider the appeal / representation submitted by the petitioner / appellant dated 06.08.2024, where, the same shall be considered by the first respondent by exercising its power under Rule 17 of the Rules as stated herein above and pass necessary orders thereon on merits and in accordance with law within a period of



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two months from the date of receipt of a copy of this order.

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- It is needless to mention that once the order is passed by the first respondent in exercise of his power under Rule 17 of the Rules, depending upon the outcome of the same, further action can be taken by the second respondent on the application submitted by the appellant / petitioner seeking for compassionate appointment, within a period of one month thereafter.

(R.S.K., J.) (C.S.N.,J.)
12.12.2024

KST

Index : Yes/No

NCS : Yes/No

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