



W.P.No.1777 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 11.03.2025

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP No. 1777 of 2021

R.Francis Prasannan
S/o. A. S. Roman, 182 / E,
Perumal Malai, Suriampalayam Post,
Erode District.

... Petitioner
Vs.

1. The Director,
Directorate of Medical and Rural Health Services, Anna Salai,
Chennai - 600018.

2.The Joint Director,
Health Services, Erode - 9.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent culminated in and by his proceedings in Na.Ka.No.8753/NP-3/2019, dated 24.03.2020, quash the same and consequently direct the respondents to consider the applications made by the petitioner for compassionate appointment.

For Petitioner : Mr.V.S.Kesavan
For Respondents : Mr.E.Sundaram,
Government Advocate

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ORDER

WEB COPY This Writ Petition is filed to call for the records of the 2nd respondent in his proceedings in Na.Ka.No.8753/NP-3/2019, dated 24.03.2020, quash the same and consequently direct the respondents to consider the applications made by the petitioner for compassionate appointment.

2.The petitioner's father was working as a Male Nurse Assistants at Government Hospital, Kodumudi. Whiles, he died in harness on 26.03.2012, leaving behind the petitioner and his mother as dependants. As the petitioner's family was suffering in penury, their well wisher's advised them to submit application for compassionate appointment for the petitioner. Whiles, one Mariammal claimed herself as petitioner's father's second wife, and staked rival claim to the pension and other benefits payable to them. The petitioner was advised to obtain legal heirship certificate, for claiming pensionary benefits for his mother and so the petitioner filed a suit in O.S.No.216 of 2013, before the I Additional District Munsif Court, Erode for a declaration that the petitioner and his mother were the only legal heirs of his father. Meanwhile, the petitioner sent a representation on 12.12.2013, to the respondents stating that the petitioner and his mother were in the process of getting declaration from the Court. In pursuance of

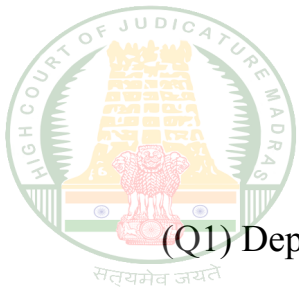


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the Civil Court Decree dated 29.04.2016, the Revenue Tahsildar, issued the legal

heirship certificate to the petitioner and his mother on 26.07.2016. After receipt of the legal heirship certificate, the petitioner's mother gave a 'No Objection Certificate' and prayed for compassionate appointment for the petitioner. On 03.11.2017, the petitioner also submitted a handwritten application to the second respondent, requesting for compassionate appointment and later sent a reminder letter on 03.05.2018. Initially, the second respondent vide letter dated 25.07.2018, directed the petitioner to appear before him on 10.08.2018, for the compassionate appointment in the post of cook and launderer in Erode Government Hospital. However, the petitioner was subsequently informed that his application was sent to the first respondent, for concurrence. The first respondent vide the impugned order dated 24.03.2020, rejected the petitioner's application, stating that the application was submitted beyond three years, from the date of the death of the deceased employee. Aggrieved by the impugned order, the petitioner has filed the above writ petition for the aforesaid relief.

3.The respondents filed a detailed counter stating interalia that, petitioner's application for compassionate appointment was submitted on 03.11.2017, beyond the period of three years stipulated in G.O.Ms.No.42, Labour and Employment



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(Q1) Department, dated 12.03.2007 and therefore it was rightly rejected by the first

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respondent vide impugned order. The respondents submitted that the petitioner's father died in harness on 26.03.2012, and it was after a delay of five years, that the petitioner filed the application for compassionate appointment. The petitioner's application was not submitted within three years of the death of deceased employee and as it was in violation of the G.O.Ms.No.42, the same was rejected. The respondents prayed for dismissal of the writ petition for the said reasons.

4.The learned counsel for the petitioner relied on the Judgment of the Hon'ble Division Bench of this Court in W.P.No.28945 of 2019, wherein this Court held that the period stipulated in G.O.Ms.No.42, was not a hard and fast rule and that the same could be applied on consideration of the facts of each case. The learned counsel further submitted that the petitioner had to approach the Civil Court for a declaration of his and his mother's status as the only legal heirs of the deceased and therefore the delay in submitting the application. The learned counsel further submitted that the petitioner's family was suffering in poverty and therefore it was a fit case for relaxing the three years period stipulated in G.O.Ms.No.42.

5.The learned Government Advocate appearing for the respondents, on the

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other hand, submitted that nothing prevented the petitioner from filing the application within the period of three years. The learned Government Advocate further submitted that no compassionate appointment could be given in violation of G.O.Ms.No.42. Hence the learned counsel prayed for dismissal of the writ petition.

6.I have heard both the learned counsels and I have perused the materials placed on record.

7.Admittedly the petitioner's father died in harness on 26.03.2012, leaving behind the petitioner and his mother. The petitioner's father worked as Male Nurse Assistant, at Government Hospital, Kodumudi. The petitioner was aged about 26 years, at the time of demise of his father. Clause 2.5 of G.O.Ms.No.42, Labour and Employment (Q1) Department, dated 12.03.2007, provides the time limit of three years, from the date of death of the Government Servant for submitting applications for compassionate appointment. Whiles, one Mariammal claimed herself as the petitioner's father's second wife, and staked rival claim to the pension and other benefits of the petitioner's father. The petitioner was advised to obtain legal heirship certificate for claiming pensionary benefits for his mother and so the



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petitioner filed a suit in O.S.No.216 of 2013, before the I Additional District

Munsif Court, Erode, for a declaration that he and his mother were the only legal heirs of his deceased father. Meanwhile, the petitioner claims to have sent a representation on 12.12.2013, to the respondents, stating that he was in the process of obtaining a declaration of his status as legal heir from the Court. The respondents denied the receipt of the same. In the absence of any proof that the representation for compassionate appointment was sent on 12.12.2013, within the time stipulated in G.O.Ms.No.42, the same cannot be considered, moreso, when the respondents have denied the receipt of the same. It is the bounden duty of the petitioner to establish the submission of the said representation. In the absence of the proof of submission of the representation dated 12.12.2013, the submission of the petitioner that the first representation was sent within the stipulated period cannot be accepted. The representation that was sent on 03.11.2017, was clearly beyond the period stipulated in G.O.Ms.No.42 dated 12.03.2007. The only reason cited by the petitioner for the delay, is that the petitioner filed a suit in O.S.No.216 of 2013, before the I Additional District Munsif Court, Erode for a declaration of his and his mother's status as the only legal heirs of his deceased father. In my view, the said reason cannot be countenanced, because the filing of suit has no

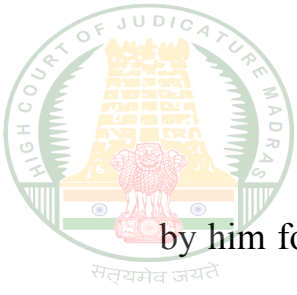


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relevance to the mere submission of the application for compassionate

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appointment. The petitioner's counsel relied on the Division Bench judgment and another judgment in support of his submission that in suitable cases the delay could be relaxed. In the Division Bench case, the petitioner was a minor aged about 14 years, an orphan and she was under the care and custody of her grand father aged about 82 years. Further she had to discontinue her studies for want of funds. Under said facts and circumstances, the Division Bench found it fit to relax the time period fixed in G.O.Ms.No.42. The other Judgment relied on by the petitioner in W.P.(MD).Nos.5187 and 5188 of 2009, also will not help the petitioner. In the said case, though the court found that the application was filed belatedly, considering that there was a Government ban on appointment, the court held that even if the applications were to be filed in time, the same would not have been considered. The court, on facts held that as the application was filed during the pendency of the ban, the time period could be relaxed. In my view, the said Judgments were decided on the facts of the case and therefore the same cannot be applied to the facts of the case in hand. In the present case, the petitioner was undisputably a major, aged about 26 years, even at the time of his father's death. The petitioner seeks to justify the delay by relying on the pendency of the suit filed



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by him for declaration of his status as the only legal heir of his deceased father, in view of the rival claim set up by his father's second wife. Compassionate appointment is an exception to regular appointment and therefore the persons claiming for compassionate appointment should strictly comply with the terms of the scheme for compassionate appointment. The petitioner was admittedly 26 years of age at the time of his father's death. The filing of application for compassionate appointment, in my view has no nexus to the Civil Court proceedings. The petitioner could have filed the application in time and thereafter sought for time to produce the legal heirship certificate. Further the petitioner being a major aged about 26 years, unless established, it cannot be presumed that he is not having any job or he is suffering from penury. I therefore find no merits in the writ petition.

8. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs.

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Speaking/Non-speaking order

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Internet: Yes

Neutral Citation: Yes/No

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To

1.The Director,
Directorate of Medical and Rural Health
Services, Anna Salai, Chennai - 600018.

2.The Joint Director,
Health Services, Erode - 9.

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