

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on

28.02.2020

Pronounced on

28.05.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P. (MD) No.4043 of 2016

S.Thanakumar

...Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Tahsildar,
Virudhunagar Taluk,
Virudhunagar.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent i.e., the District Collector, Virudhunagar passed in his proceedings No.251/2010 dated 01.09.2015 and to quash the same and consequently to direct the District Collector, Virudhunagar to provide appointment on compassionate grounds to the petitioner within a time frame that may be fixed by this Hon'ble Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.R.Sethuraman
Special Government Pleader

ORDER

The grievance of the petitioner is that his claim for appointment on compassionate ground has not been considered by the respondents. It is not in dispute that the petitioner herein is the legal heir of the deceased employee and as such, is entitled to seek for compassionate appointment, after the death of the said employee.

2. In the case in hand, the Government Employee/petitioner's father had died on 08.08.2009 while he was in service. The widow of the employee made an application on 18.10.2010 seeking appointment for her son, who is the petitioner herein. The said request has been rejected through the impugned order dated 01.09.2015 stating that the petitioner, had not attained the age of majority, within three years from the date of the death of his father. The petitioner herein had also made an application seeking for

compassionate appointment on 11.02.2016. The said application is still pending. Further, in view of the decision taken by the respondents in the impugned order, there is every possibility that the petitioner's request would also be rejected stating that he had not attained the age of majority, within three years from the date of the death of his father.

3. What requires to be considered is as to whether the legal heir had made an application within the period of three years after he attained majority. This aspect has come up for consideration before this Court in various decisions and it has been categorically held that an application made by the legal heir of the deceased employee, within three years from the date of his majority, is deemed to be made well within time. One such order passed by this Court in W.P.No.26343 of 2012 dated 23.11.2016 in the case of M.Sathish Kumar vs. the Director of School Education and others, had placed reliance on two orders of the Hon'ble Division Benches of this Court and ultimately held that, when an application is made within three years from the date of attaining majority, the claimant would be entitled for appointment on compassionate grounds. The relevant portion of the order reads as follows:

'4. In this context, a Division Bench of this Court in a judgment reported in The Chief Engineer/Personnel, T.N.E.B., & another Vs. S.Suder reported in MANU/TN/0635/2009 was held as follows:

"4. In the judgment reported in 2001 Writ L.R.601 in the case of "Ramadoss.D. Vs. The Chief Engineer, T.N.E.B.", this Court (D.Murugesan,J) directed the consideration of the application made within a period of three years after attaining the majority by placing reliance on the very same Circular in B.P.No.46, dated 13.10.1995.

5. Subsequently, in the judgment reported in 2002(4) L.L.N.1132, (D.Murugesan,J.), in the case of "P.Ravi V.Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on compassionate grounds was directed to be considered.

6. Justice P.D.Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P.No.19673 of 2003, in the order dated 23.09.2003, in the case of "J.Jayakaran Vs. The Superintending Engineer, Theni Electricity Distribution Circle, Theni"

and the application for appointment on compassionate grounds was directed to be considered.

7. Justice K. Govindarajan has also taken the same view in Writ Petition No.13099 of 2003, order dated 30.10.2003, in the case of "G.Muthamilselvan V. The Chief Engineer (Personnel) and Anr."

8. Justice F.M. Ibrahim Kalifulla has also taken the same view in the decision reported in 2004(3) CTC 120, (2004) MLJ 238 in the case of "Meer Ismail Ali.T. V. The Tamil Nadu Electricity Board". We are told that the order in the said case of "Meer Ismail Ali" was confirmed in the Writ Appeal by the Division Bench in W.A.No.4008 of 2004, by judgment dated 1.12.2004 and as against the said judgment dated 1.12.2004, the Special Leave Petition in Civil Appeal No.6387 of 2005, was also dismissed by the Supreme Court, by judgment dated 4.4.2005."

5. In a very similar issue, a Division Bench of this Court in W.P.No.3050 of 2003 observed as follows:

"9. Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No.3050 of 2003 in the case of "Indiraniammal V. The Chief Engineer (Personnel) and Anr." and by judgment dated 08.03.2005, the Division Bench set aside the impugned order therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to consider the application.

10. There cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, by-passing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints of a family due to sudden demise of the breadwinner of a family, the State

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Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the office of the Assistant Engineer, TNEB, Kazhuvanthilai, Kanyakumari District, died due to illness on 07.03.1998. At the time of the death of his father, the respondent was 15 years old and for the purpose of making application for appointment on compassionate grounds, he should have completed 18 years. Hence, he could not make any application for appointment on compassionate grounds. By placing reliance on B.P.No.46, dated 13.10.1995, he made application on 3.9.2002, within a period of four days from the date of his attaining majority, i.e., 18 years. That application was rejected on the ground that the same cannot be entertained as per the Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis of the Memo, dated 6.4.2002.

12. As we have already referred that the application for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board

proceedings in B.P.No.46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority."

6. If the above proposition is applied to the present facts of the petitioner, then the petitioner would be entitled for an appointment on compassionate ground, since the application has been made within a period of three years from the date of attaining majority. Since this application for compassionate appointment was rejected on the sole ground that the same was time barred and by applying the ratio in the decision of the Division Bench, the impugned order cannot be sustained and is liable to set aside. Accordingly, the impugned order dated 31.01.2012 passed by the third respondent is quashed.'

4. The aforesaid order is self explanatory. As such, the issue as to whether the widow or any other legal heir, who was major at the time when the employee had expired, had or had not made an application within three years from the date of death becomes immaterial. What would suffice is as to whether the minor legal heir had made an application seeking for compassionate appointment within three years from the date he had attained his majority.

5. In the instant case, the petitioner herein, had attained his majority on 14.03.2013 and he had made his application seeking for compassionate appointment on 11.02.2016, which is within a period of three years. By applying the ratio laid down in the aforesaid decision, the petitioner would be entitled for appointment on compassionate grounds.

6. It would be pertinent to point out herein that in all cases where claim is made for compassionate appointment, the concerned authorities are required to act efficaciously and speedily, since the very purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread-earner in the family and that there should not be any delay in such appointments. This proposition was held by the Hon'ble Apex Court in the case of **Sushma Gosain vs. Union of India** reported in 1989 (4) SCC 468 had held as follows:

'It must be stated unequivocally that in all claims for appointment on compassionate grounds,

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there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.'

7. The same ratio was reiterated by the Hon'ble Apex Court in the case of Canara Bank vs. M.Mahesh Kumar reported in 2015 (7) SCC 412.

8. In the light of the above observations and findings, the impugned order passed by the first respondent dated 01.09.2015 in ep/K/m6-j/g/251-2010 is set aside. Consequently, there shall be a direction to the concerned respondent to issue an appointment order to the petitioner herein, on compassionate grounds, to such post that may be proportionate to the petitioner's qualification. The concerned respondent shall ensure that the appointment order is issued atleast within a period of four weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

22/06/2020
Sub Assistant Registrar (CS)

DP

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Tahsildar,
Virudhunagar Taluk,
Virudhunagar.

Order made in

W.P. (MD) No.4043 of 2016

28.05.2020

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