

(2014) 11 MAD CK 0466

Madras High Court

Case No: Writ Petition No. 17751 of 2007 (O.A. No. 1981 of 2004)

D. Saravanan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision: Nov. 19, 2014

Hon'ble Judges: D. Hari Paranthaman, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D. Hari Paranthaman, J.

The petitioner filed O.A.No. 1981 of 2004. On abolition of the Tribunal, the matter stood transferred to this Court and re-numbered as W.P.No. 17751 of 2007.

2. The mother of the petitioner was working as an Auxiliary Nurse Midwife in Marakkanam Maternity Hospital. She died on 15.08.1979 while in service. At the time of death of her mother, the petitioner was aged 7 years. It is averred by the petitioner that an application, dated 21.01.1992 was submitted in the prescribed format and the same is enclosed in the typed set of papers. When a specific averment is made by the petitioner that he had made an application on 21.01.1992 seeking compassionate appointment, the same is not denied by the respondents in the reply affidavit.

3. While so, a letter in A6/3521/94, dated 23.12.1994, was addressed by the Tahsildar, Fort-Tondiarpet, Chennai to the Divisional Development Officer, Tindivanam, recommending the name of the petitioner for compassionate appointment as his family was in indigent circumstances.

4. Thereafter, the second respondent viz., District Collector, Villupuram, had also sent proposals to the first respondent by his proceedings, dated 01.12.1997 recommending to provide him the post of Office Assistant on compassionate grounds, as the petitioner had passed 8th standard, which is the qualification prescribed for the post of Office Assistant. The said proposal of the District Collector

is based on the proposal dated 21.12.1996 of the Commissioner, Marakkanam Panchayat Union, the third respondent. The Government, by an order dated 12.05.1999 rejected the proposal of the District Collector. However, the said letter of the Government was not furnished to the petitioner. Based on the said letter of the Government dated 12.05.1999, the second respondent passed the consequential order by way of the impugned order, dated 16.06.1999 rejecting the application of the petitioner on compassionate ground. Challenging the same, the petitioner has filed this original application.

5. The third respondent has filed a reply affidavit seeking to sustain the impugned order. No separate counter is filed by other respondents.

6. Heard both sides.

7. As stated above, the third respondent recommended the name of the petitioner for compassionate appointment vide proceedings dated 21.02.1997 as found in the proceedings dated 01.12.1997 of the District Collector to the Government. But there is no whisper about the same by the third respondent in the counter affidavit. The impugned order of the District Collector, dated 16.06.1999 is based on the order dated 12.05.1999 of the Government. The reason given in the letter dated 12.05.1999 of the Government for declining compassionate appointment is that the mother of the petitioner died on 15.08.1979 and there was a gap of 19 years and therefore, the request for compassionate appointment could not be considered.

8. The Government issued G.O.Ms.No. 120, Labour and Employment department, dated 26.06.1995, prescribing 3 years limitation for making application for compassionate appointment from the date of death of the Government employee. Prior to the issuance of this Government Order, there was no limitation prescribed by any Government Order. While so, a clarification letter dated 11.10.1995 was issued by the Labour and Employment Department of the Government stating that three years limitation period could not be applied in the case of death of employee that occurred prior to 26.06.1995. Since the Government issued such a letter dated 11.10.1995, clarifying G.O.Ms.No. 120, the third respondent viz., Commissioner, Marakkanam Panchayat Union and the District Collector of Villupuram recommended compassionate appointment of the petitioner, since the application of the petitioner was made prior to 26.06.1995. In any event, when the District Collector made recommendation dated 01.12.1997 based on the recommendation dated 21.02.1997 of the Commissioner of the Panchayat Union, the Government letter dated 11.10.1995 of the Labour and Employment Department was in operation. However, before the passing the impugned order, dated 16.06.1999, the Labour and Employment issued letter dated 07.05.1999 cancelling its earlier letter dated 11.10.1995.

9. Furthermore, the Government issued G.O.Ms.No. 1479, Home Department, dated 09.11.1999, after considering G.O.Ms.No. 120 and the letters dated 11.10.1995 and

07.05.1999 of the Labour and Employment Department and held that three years limitation period shall not be applied in the case of Government employee who died prior to 26.06.1996 for providing compassionate appointment to the legal heirs.

10. I am of the view that if the application for compassionate appointment was made before 26.06.1995, the same cannot be declared as belated one since there was no limitation prescribed before the issuance of G.O.Ms.No. 120 and thousand of compassionate appointments were made without reference to any limitation prior to the issuance of G.O.Ms.No. 120. Further, the Government itself issued another letter dated 11.10.1995 as stated above clarifying that the three years limitation period could not be applied in the case of death of employee that occurred prior to 26.06.1995. In this case, admittedly, the petitioner applied for compassionate appointment before 26.06.1995. In any event, the District Collector made recommendation in 1997 itself within three years from the date of issuance of the Government order.

11. I am of the view that persons claiming compassionate appointment in the case of death of Government servant, who died before 26.06.1995, could be a very few in number. Before issuance of G.O.Ms.No. 120 compassionate appointment was given without reference to any limitation. Therefore, when the petitioner made application before 26.06.1995, when there was no limitation prescribed, the same cannot be rejected on the ground that it was belated.

12. Even otherwise, I am of the view that the G.O.Ms.No. 120 shall be interpreted to give three years time from 26.06.1995 to make application for compassionate appointment in those cases where the death of Government servant took place prior to 26.06.1995. The G.O.Ms.No. 120 shall be read as stated above, since the legal heirs of the Government employees could not be blamed for not making application for compassionate appointment within three years from the date of death of the Government employee, as no such limitation was prescribed before the issuance of G.O.Ms.No. 120. Hence, the application of the petitioner herein is within time, by applying such construction of G.O.Ms.No. 120.

13. By taking into account all the aforesaid factors, and more particularly, the recommendations made by the District Collector dated 01.12.1997 and the Commissioner and also taking that G.O.Ms.No. 120 prescribes that limitation of three years period could be counted from 26.06.1995 for employees who died prior to 26.06.1995, the impugned order is liable to be quashed. Accordingly, it is quashed. The writ petition stands allowed and a direction is issued to the Government to provide compassionate appointment within a period of eight weeks from the date of receipt of a copy of this order. No costs.