

A.Premkumar Vs. the Director

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SooperKanoon Citation : sooperkanoon.com/926047

Court : Chennai

Decided On : Mar-09-2012

Judge : K.Ravichandra Baabu, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P(MD)No.1781 of 2010 and M.P(MD)No.1 of 2010

Appellant : A.Premkumar.

Respondent : The Director and ors.

Advocate for Pet/Ap. : Mr.R.Vijayalakshmi, Adv.

Judgement :

Prayer

Writ petition filed under Article 226 of the [Constitution of India](#) praying for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.6683/2006/Voo. Va.1 dated 08.12.2009 on the file of the respondent No.2 and quash the same as illegal and directing the second respondent to appoint the petitioner as a Junior Assistant or any other competent post under him on compassionate grounds.

ORDER

1. In this writ petition the petitioner has challenged the order passed by the second respondent dated 08.12.2009 and consequently, seeking for a direction to the second respondent to appoint the petitioner as Junior Assistant or in any other suitable post on compassionate grounds.

2. The case of the petitioner is that his father was working as Road Roller Cleaner at the office of the 3rd respondent and died on 21.09.1996, while he was in service. The petitioner was 14 years old minor at the time of death of his father. Immediately after the death of his father, the petitioner's mother made an application on 18.11.1996 seeking for compassionate appointment before the second respondent. On 20.12.1996, the 3rd respondent called upon the petitioner's mother to furnish all the certificates. On 21.01.1997, the 3rd respondent made a recommendation to the second respondent for considering the application of the petitioner's mother for compassionate appointment. The petitioner's mother once again sent a representation on 26.05.1997 and again on 20.10.1997 seeking for compassionate appointment. On 27.11.1997, the second respondent directed 3rd respondent to submit all documents regarding the petitioner's mother's application seeking for compassionate appointment. Thereafter, the 4th respondent sent all proper documents to the second respondent on 15.12.1997. As there was no response for more than two years, the petitioner's mother once again sent a representation on 14.06.1999. On 27.03.2000, the 3rd respondent submitted a service register to the second respondent for the appointment of petitioner's mother. However, as there was a ban on appointment imposed during the year 2000, the second respondent through his proceedings dated 31.07.2003 informed that the application of the petitioner's mother was kept in the waiting list. The ban on compassionate appointment was lifted by the Government during the year 2006. Unfortunately, at that time, the petitioner's mother was not in a position to take the job, as she was not well and her age was also 52 years at that time. Therefore, both the petitioner's mother as well as his two other brothers, namely, Vimalkumar and Vijayakumar sent representations to the second respondent seeking for appointment to the petitioner on compassionate ground. On the very same day, the petitioner had also sent one representation to the second respondent seeking for an appointment on compassionate ground. The petitioner had enclosed all the

relevant documents such as death certificate of his father, community certificate, indigent certificate and legal-heir certificate. Based on the petitioner's representation, the 4th respondent had also recommended his case to the second respondent through his proceedings dated 02.06.2006. The petitioner sent further representation on 09.08.2006. Thereafter, the second respondent sought permission from the first respondent to appoint the petitioner on compassionate ground through his proceedings dated 13.01.2007. On 15.12.2008, the seniority list was prepared and the petitioner's name was listed in 5th place in the seniority. While that being the position, all of the sudden the impugned order came to be passed on 08.12.2009 by the second respondent by rejecting the petitioner's application on the ground that he made the application after lapse of three years from the date of the death of his father. Aggrieved against the same, the present writ petition has been filed. The petitioner has averred all the above said facts through his affidavit dated 12.01.2010 and an additional affidavit filed on 23.02.2012.

3. Notice of motion was ordered by this Court on 16.02.2010. After notice, the respondents entered appearance and counter affidavits have been filed by the second and third respondent individually.

4. It is stated by the second respondent that the petitioner's father was working as Road Roller Cleaner and died in harness on 21.09.1996 and the petitioner was 14 years old minor at the time of death of his father. As per G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, three years time limit has been fixed for making an application for compassionate appointment from the date of the death of the deceased employee. But in this case, the petitioner had applied only after 9 years on attaining the age of majority, which was obviously beyond the period prescribed under the scheme. It is further stated by the second respondent that the Government has issued guidelines through Letter No.5523/E3/2008-3, Rural Development and Panchayat Raj Department, dated 06.10.2009 for those who seek appointment on compassionate ground to fulfil certain conditions, namely, that the persons should be fully eligible to the post on the date of his parent's death; that the person should not be a minor on the date of death; that the person should sent his application within three years from the date of his parent's

death. As the non of the above said conditions prescribed by the Government were fulfilled by the petitioner, the application of the petitioner was rejected. More over in Government Letter No.202, Labour and Employment Department dated 08.10.2007, a guideline was issued to follow the instructions issued in G.O.Ms.No.42 dated 12.03.2007 for all present, past and future cases. It is also contended by the second respondent that providing appointment on compassionate ground is only to overcome the hardship, due to the unexpected death of the employee and such appointment should be provided immediately to the family. Therefore, such appointment cannot be made after lapse of three years. The counter affidavit filed by the 3rd respondent is also in similar line as that of the counter affidavit by the second respondent.

5.The learned Counsel appearing for the petitioner argued that an application from the family of the deceased was made on 18.11.1996, immediately after the death of the breadwinner of the family. The said application filed by the petitioner's mother was duly acknowledged by the 3rd respondent through his proceedings dated 20.12.1996. Therefore, it is evident that an application by the petitioner's mother was made as early as on 18.11.1996 i.e., within two months from the date of death of the deceased. The learned counsel for the petitioner, therefore, argued that when such application filed by the mother was only under process all along till the year 2003 as could be seen from the proceedings of the second respondent dated 31.07.2003. As there was a ban at that time and after lifting of the same in the year 2006, when the petitioner's mother was not in a position to take the job as she had already become old and also was not physically well, the petitioner made an application on 17.05.2006 seeking for compassionate appointment and such application of the petitioner was also supported by his mother as well as other two brothers by saying that they have got no objection for granting such appointment to the petitioner. Therefore, the learned counsel for the petitioner has contended that there is no delay on the part of the petitioner in making the application.

6.Per contra, the learned Special Government Pleader appearing for the respondents has argued that when the petitioner made an application on 17.05.2006 the petitioner was 24 years old and consequently, when no application was filed either within three years from the date of death of the deceased or within

three years from the date of attaining the majority, the claim of the petitioner seeking compassionate appointment based on the application dated 17.05.2006 cannot be considered.

7. Heard the learned counsel for the petitioner and the respondents.

8. In this case, the petitioner's father, while he was in service, died in harness on 21.09.1996. It is evident from the proceedings of the 3rd respondent dated 20.12.1996 that an application came to be filed by the petitioner's mother seeking for compassionate appointment on 18.11.1996. Though the application date was not specifically mentioned, from the proceedings of the 3rd respondent dated 20.12.1996, it could be safely concluded that at any event the application was made earlier to 20.12.1996 only. Therefore, an application from the family of the deceased seeking for compassionate appointment by one of its member was made within two months from the date of the death of the deceased. From the various proceedings of the respondents Nos.2, 3 and 4 commencing from 20.12.1996 to 31.07.2003 it could be seen that the said application filed by the petitioner's mother was only under process and finally by the proceedings dated 31.07.2003 of the second respondent the said application was kept in the waiting list, in view of the ban imposed by the Government on appointment. Admittedly, when the ban was lifted only in the year 2006, the respondents cannot expect the petitioner to make an application during the ban period as well. More over, in this case, when the petitioner's mother made an application as early as on 18.11.1996, the same was only kept pending till the year 2003 without passing any orders on the same. Therefore, in the absence of any rejection order passed on the application filed by the petitioner's mother, the subsequent application filed by the petitioner on 17.05.2006 after lifting of the ban has to be treated only as an application in continuation of the earlier application filed by the petitioner's mother and not as a fresh one. The respondents are not justified in rejecting the claim of the petitioner on the ground that the same was made beyond a period of three years. The very same issue was considered by me in W.P(MD)No.9946 of 2007 dated 01.02.2012 in the matter of D.Sitha Lakshmi vs. The District Collector, Sivagangai District, Sivagangai, wherein, after considering various orders passed by this Court in similar cases, I have held as follows:-

"15.From the above discussion of facts and circumstances of the case and considering various decisions rendered by this Court as referred above, the issues involved in this case are answered as follows:- (1) The application of the petitioner seeking for compassionate appointment made cannot be rejected on the ground that the same was not submitted within a period of three years by applying G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, as the date of the death of the deceased employee was prior to the said G.O.

(2) The respondent is not entitled to clarify through the Government letter No.202, Labour and Employment Department, dated 08.10.2007 that the three years limitation period would be applicable even in respect of cases where the date of death was prior to G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, as the benefit already accrued cannot be taken away by issuing such Government Letter and applying the same retrospectively.

(3) If an application for compassionate appointment is made by any member of the deceased family and when such application was not rejected on merits, subsequent application made by another member of the family has to be treated only as an application in continuation of the earlier application submitted by the other member of the family and not a fresh one to apply the limitation period."

9.In another decision rendered by the learned Single Judge of this Court in W.P(MD)No.986 of 2009 dated 11.12.2009 in the case of M.Syed Sagubar Sathiq vs. The Principal Chief Engineer, Water Resources cum Chief Engineer (Public) Public Works Department, Chepauk, Chennai and others, wherein at paragraphs 11 and 12, it has been held as follows:-

"11. It is pertinent to note that the said order is in printed form. There is absolutely no reference whatsoever in respect of the previous communication sent by the respondents 1 to 3. It is seen that the petitioner was a minor at the time of the death of his father on 23.11.1980. It is pertinent to note that the petitioner attained the age of majority on 15.06.1998 and he immediately preferred an application on 25.07.1998 well within the period of three years from the date of attaining his age of majority.

12. In a catena of decisions, this Court has categorically held that the period of limitation of three years is to be reckoned from the date of attaining the age of majority. It is worthwhile to refer the said decisions as hereunder: (i) 2006 (9) SCC 195 (SYED KHADIM HUSSAIN v. STATE OF BIHAR) in which the Hon'ble Apex Court in a similar matter has held hereunder:- "The widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application, he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application. As the widow had submitted the application in time, the authorities should have considered her application. As eleven years have passed, she would not be in a position to join the Government service. This is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstances for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, the respondent authorities are directed to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months."

10. In another decision in W.P.No.9232 of 2011, dated 18.04.2011, in the matter of G.Saravanakumar vs. The Chairman, Tamil Nadu Electricity Board, No.144, Anna Salai, Chennai 600 002 and others, the learned Single Judge, after elaborately discussing the issue, found that the rejection of the application for compassionate appointment by stating that the same was not filed within a period three years from the date of death of the deceased and that the petitioner therein did not complete 18 years of age within three years are not valid grounds to deny the appointment of compassionate ground.

11. In respect of the contention made by the respondents that at the time of making the application by the petitioner on 17.05.2006 he was already a major and was 24 years old and therefore, his application having not been made at least within three years after attaining the majority is concerned, as I have already held that the petitioner's application is to be treated only as an application in continuation of the earlier application filed by the petitioner's mother dated 18.11.1996, the question of treating the petitioner's application as a fresh one does not arise and consequently, treating the petitioner's application as belated one even after attaining the majority also does not arise. Therefore, the reasoning assigned in the impugned order is not justifiable and without reference to the earlier application filed by the petitioner's mother dated 18.11.1996 and consequently, the same is liable to be set aside.

12. Considering all the facts and circumstances of the case and the orders passed by this Court in similar cases, the impugned order passed by the 2nd respondent is liable to be set aside and accordingly, the same is set aside. Consequently, the writ petition is allowed and the matter is remitted back to the 2nd respondent to consider the claim of the petitioner for compassionate appointment and pass fresh orders, without reference to the period of limitation, within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the petitioner should satisfy the respondents with regard to the requisite qualification for the post to which the appointment is to be considered as well as the continuance of the indigent circumstances of the family of the deceased making it eligible for a compassionate appointment even as on today.

13. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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