

(2012) 01 MAD CK 0186
In the Madras High Court
Case No : Writ Appeal No. 2452 of 2011

A. Vasanthi

APPELLANT

Vs

The Joint Registrar of Co-operative Societies (Full Additional Charge) Cuddalore Region, Cuddalore and The Registrar of Co-operative Societies Chennai 10

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 01 MAD CK 0186

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : S.M. Subramaniam, for the Appellant; S. Venkatesh, G.P. Assisted by T.N. Rajagopalan, for the Respondent

Final Decision : Dismissed

Judgement

Honourable the Chief Justice M.Y. Eqbal and T.S. Sivagnanam, J.—This appeal is directed against the Judgment and Order in

W.P.No.21420 f 2009 dated 19.8.2011. The appellant is the writ petitioner and the writ petition was filed challenging the order passed by first

respondent dated 2.7.2009, by which the first respondent rejected the request made by the appellant for grant of appointment to her daughter on

compassionate ground due to the demise of her husband, who was employed under the first respondent.

2. The facts which has given rise to the present litigation could be briefly summarised as follows:

The appellant's husband was employed as a Co-operative Sub Registrar /Special Officer in the N.L.C. Employees Thrift and Credit Society,

Neyveli, and died in harness on 14.9.2002. The appellant submitted an

application requesting for grant of appointment on compassionate ground for her son Thiru A.Vignesh and such application was made on 2.1.2004 to the Deputy Registrar of Cooperative Societies, Cuddalore, under whom the appellant's husband was working. On the date of such application, the appellant's son had completed his +2 course and had also completed 18 years of age. Further, the application for compassionate appointment was submitted within a period of three years from the date of demise of the employee as per G.O.Ms.No.61, Labour and Employment Department dated 19.7.2006. However, the application was not processed on the ground that on the date of demise of the appellant's husband, her son did not complete 18 years of age.

3. The respondents placed reliance on the Government Letter dated 19.5.2009, declining to consider the appellant's request. It appears that the appellant subsequently gave another representation on 12.8.2009, changing her option and requesting suitable appointment for her daughter Selvi

A.Janani. That request along with her earlier request was rejected by an order dated 2.7.2009, by placing reliance on the Government Letter

dated 19.5.2009. It was stated in the said order that both the children of the deceased employee had not attained majority and did not possess

requisite educational qualification on the date of demise of the employee and therefore the request cannot be considered. The order dated

2.7.2009 was impugned in the writ petition. The learned single Judge who heard the writ petition dismissed the same by an order dated 19.8.2011,

by holding that the concept of compassionate appointment has been recognised as an exception to the General Rule carved out in the interest of

justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. In this regard, the learned single

Judge placed reliance on several decisions of the Hon'ble Supreme court and dismissed the Writ Petition. Aggrieved by such order, the appellant

has filed the instant Appeal.

4. We have heard the learned counsel for the appellant and the learned Government Pleader appearing for the respondents.

5. Before, we proceed to take note of the legal aspects of the matter, it would be necessary to look into certain relevant facts: The employee died

in harness on 14.9.2002. The Government have stipulated that the request for

compassionate appointment to the legal heir of the deceased

employee could be made within a period of three years. It has not been disputed by the respondents that the appellant submitted application well

within the said period, by application dated 2.1.2004. In the said application, the appellant requested for grant of suitable appointment for her son

who had by then completed +2 education. While the application was under consideration, the appellant submitted another representation dated

12.8.2008, requesting that she may be allowed to change the option and sought for appointment for her daughter. Both the requests were

considered and they were rejected by the order dated 2.7.2009, which was impugned in the writ petition.

6. The first respondent while rejecting the appellant's request, placed reliance on the Government letter dated 19.5.2009, wherein it has been

stated that if the legal heirs of the deceased Government servants are minors and do not possess required educational qualification on the date of

death, an application for compassionate appointment subsequently made after attaining majority and after acquiring required educational

qualification is contrary to G.O.Rt.No. 42 dated 12.3.2007 and G.O.Rt. No.202 dated 8.10.2007. Further, it was stated that a request for

change of legal heir for compassionate appointment cannot be considered.

7. It is seen that two reasons have been assigned for rejecting the appellant's request, firstly by stating that her son did not complete 18 years of

age on the date of demise of his father. The appellant's son was born on 20.12.1984 and his father died on 14.9.2002 and the son had completed

18 years of age on 20.12.2002. Even prior to the demise of the appellant's husband, her son had completed the +2 examination as of March

2002. Further, it is not in dispute that the application for compassionate appointment was made well within the period of three years. Admittedly,

on the date of demise of the appellant's husband, her son had passed +2 examination and therefore it cannot be stated that a suitable employment

cannot be offered to a person who has completed +2 examination. Therefore, we find no force in the contention of the respondents stating that the

appellant's son did not have the requisite educational qualification and this submission is factually incorrect since as early as in March 2002, the

appellant's son had passed +2 examination, whereas his father had died about

three months before he could complete 18 years of age. In any event, the Government has stipulated that a request for compassionate appointment can be submitted within a period of three years from the date of demise of the employer. Therefore, the respondent cannot nullify such an application on the ground that the dependant did not complete 18 years of age on the date of demise of the employee, whereas in the instant case, the dependant had completed 19 years on the date of application. Therefore, when an application is well within the period of limitation prescribed by the Government, which is in effect a scheme for compassionate appointment, such application cannot be thrown out on such hyper technical ground as has been stated in the order impugned in the writ petition. Therefore, we are also unable to accept the stand taken by the respondents in this regard.

8. Similar issue came up for consideration in a case relating to a request for compassionate appointment in the services of the Tamil Nadu

Electricity Board (TNEB). The TNEB had also framed a similar scheme stating that the application should be submitted within a period of three

years from the date of the death of the employee and the applicant/dependant ought to have completed 18 years of age. Several writ petitions

were filed challenging the orders of rejection passed by the TNEB and several learned single Judges of this Court and the Division Bench of this

Court had occasion to consider the said issue and in one such case, the order passed by the Division Bench was confirmed by the Hon''ble

Supreme Court.

9. The learned single Judge of this Court in *J. Jeba Mary v. The Chairman, Tamil Nadu Electricity Board* 2011 3 LLN 405 had taken note of the

various orders passed by the learned single Judges, Division Benches as well as the Hon''ble Supreme Court and held as follows:

12. (a) Similar issue as to whether an application seeking compassionate appointment can be rejected on the ground that the application was not

submitted within three years from the date of death of the deceased employee and whether completion of 18 years within three years, is a

mandatory requirement when earlier application submitted by other claimant is kept pending, was considered by this Court in the decision reported

in *T. Meer Ismail Ali Vs. The Tamil Nadu Electricity Board and The Superintending*

Engineer, Tamil Nadu Electricity Board, J (as he then was)).

In the said case the deceased Board employee died on 13.4.1993 and the application submitted by one of his daughter on 5.8.1997 was rejected

on the ground that she had not completed 18 years of age and after completing 18 years of age when an application was made on 4.7.2000 which

was rejected on the ground that the application was not made within three years from the date when the Board Proceedings dated 13.10.1995

was issued. This Court considering the technical plea raised by the respondent Board set aside the said order and remitted the matter to pass fresh

orders without reference to the objections already raised by the Board. The said order of the learned single Judge was challenged by the TNEB in

W.A.No.4008 of 2004 before the First Bench of this Court (consisting of the Hon"ble Mr.Justice Markandey Katju,C.J. (as he then was) and

N.V.Balasubramanian,J.) dismissed the writ appeal on 1.12.2004. The respondents herein filed SLP No.6387 of 2005 against the said order

which was also dismissed on 1.4.2005 by the Honourable Supreme Court and consequently the said writ petitioner was given compassionate

appointment.

(b) Another writ petition in W.P.No.41459 of 2005 was considered by me on the same set of facts. The said writ petition was allowed following

the earlier order of the Division Bench of this Court made in W.A.No.4008 of 2004 dated 1.12.2004 and the said decision is reported in Selvi. R.

Anbarasi Vs. The Chief Engineer (Personnel), Tamil Nadu Electricity Board and The Superintending Engineer, Tamil Nadu Electricity Board, The

said order was challenged by the TNEB before the First Bench in W.A.No.988 of 2006. However, the said petitioner was given appointment on

compassionate ground by implementing the order and therefore the writ appeal was dismissed as infructuous on 15.9.2006 by recording the

statement made by the Standing Counsel for the TNEB.

(c) In W.P.No.21512 of 2003 one Indiraniammal challenged the rejection of compassionate appointment on similar ground. The learned single

Judge dismissed the writ petition by order dated 4.8.2003 against which the petitioner therein filed W.A.No.3050 of 2003 and the said writ appeal

was allowed by the Division Bench (consisting of the Hon"ble Mr.Justice P.Sathasivam (as he then was) & S.K.Krishnan,J) by order dated

8.3.2005 following the earlier judgments as well as the Supreme Court Judgment reported in Balbir Kaur and Another Vs. Steel Authority of India

Ltd. and Others, Against the said decision Civil Appeal No.2039 of 2006 was filed by the respondent Board herein which was dismissed by the

Honourable Supreme Court on 30.3.2010.

(d) Dismissal of another W.P.No.775 of 2004 by order dated 29.1.2005 on the ground of delay was considered by the Division Bench

(F.M.Ibrahim Kalifullah,J. (as he then was) & P.Murugesan,J) in W.A(MD).No.29 of 2006 and by order dated 27.6.2006 the Division Bench

allowed the writ appeal and directed to give compassionate appointment to the younger son of the deceased Board employee, who died on

15.11.1996. The said order of the Division Bench was also challenged by the Board in SLP(C)No.15534 of 2007 which was also dismissed by

the Apex Court on 8.4.2009.

(e) Three writ petitions were disposed of by me i.e., W.P.Nos.19914 of 2004, 32409 of 2004 and 10577 of 2005 by common order dated

24.7.2006 wherein similar issue was considered. In respect of the above three writ petitions, which were allowed, writ appeal was filed against

one writ petition in W.A.No.1206 of 2006 while implementing the order in respect of other two cases. The said writ appeal was allowed by the

Division Bench on 29.9.2006. The respondent in the writ appeal viz., J.Karthick filed review application which was also rejected by the Division

Bench on 25.8.2008. Against the dismissal of the writ appeal as well as rejection of review application, the said J.Karthick filed SLP(C)

No.2004-2005/2009 and on 23.2.2009 the SLPs were tagged along with Civil Appeal No.2039 of 2006 viz., Indiraniammal case. Subsequently

the said SLP was numbered as Civil Case Nos.5068-5069 of 2009 which was allowed on 30.3.2010 and the said order reads as follows:

Leave granted.

Heard learned counsel for the parties.

These Appeals have been filed against the impugned judgment of the High Court of Madras dated 29th September, 2006 and subsequent order

dated 25.8.2008 passed in the review application.

The Division Bench of the High Court has reversed the judgment of the learned single Judge only on the ground of delay who directed

compassionate appointment to the appellant. The appellant was a minor at the time of the death of his father and since the mother of the appellant

applied within time, we are of the opinion that the appellant after becoming major should have been granted compassionate appointment.

Accordingly, we allow these appeals, set aside the impugned judgment of the Division Bench and restore the judgment of the learned single Judge.

No costs.

(Emphasis Supplied)

From the perusal of the above order it is evident that the order passed by the Division Bench in writ appeal and in the review petition were set

aside and the order of the single Judge dated 29.9.2006 was restored.

(f) In W.P.No.18575 of 2006 I had an occasion to consider similar issue and allowed the writ petition on 20.6.2006 by following earlier orders.

The said order was also challenged by the respondent in W.A.No.42 of 2007 and the Division Bench (D.Murugesan,J & K.Venkataraman,J)

dismissed the writ appeal on 2.7.2009. The Board filed SLP(C)No.8305 of 2010 which was also dismissed by the Honourable Supreme Court

on 6.7.2010. The said candidate viz., P.Venkatesan was given compassionate appointment by order dated 18.8.2010.

(g) Again similar matter was considered by me in W.P.No.29059 of 2003 and relief granted by order dated 7.7.2006, against which also the

Board filed W.A.No.1652 of 2006. The said writ appeal was dismissed by Division Bench (D.Murugesan,J. & S.Nagamuthu,J.) on 30.3.2009.

(h) W.P(MD).No.1335 of 2006 was disposed of by me on 10.8.2006. The said order was also confirmed by the Division Bench (consisting of

the Hon"ble Mr.Justice P.D.Dinakaran (as he then was) & P.R.Shivakumar,J.) in W.A.No.309 of 2007 on 8.8.2007 and the same is reported in

(2007) 6 MLJ 1011 (Superintending Engineer, Madurai Electricity Distribution Circle v. V.Jaya) and the said candidate viz., V.Jaya was given

appointment order.

(i) Similar matter was again considered by me in W.P.No.4050 of 2006 and the said writ petition was allowed by order dated 29.6.2010

following the orders of the Division Bench and Supreme Court and the said judgment is reported in (2010) 7 MLJ 644 (M.Uma vs. Chief Engineer

(Personnel), TNEB, Chennai). No appeal is filed against the said order.

10. In view of the above, we are of the firm view that the order of rejection passed by the first respondent rejecting the appellant's request to provide suitable employment to her son is held to be unsustainable. Accordingly, the Writ Appeal is allowed and the order passed in the writ petition is set aside and the respondents are directed to provide suitable employment to consider the request of the appellant for providing suitable employment to her son A.Vignesh on compassionate ground and pass appropriate orders in this regard without reference to the objections raised in the order dated 2.7.2009. The respondents shall comply with the order and direction issued by this Court, within a period of two months from the date of receipt of a copy of this order. No costs. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.