

(2012) 02 MAD CK 0349
In the Madras High Court
Case No : W.P (MD) No. 1392 of 2007

C. Ilayaraja

APPELLANT

Vs

The District Collector, Sivagangai District, Sivagangai

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Citation : (2012) 02 MAD CK 0349

Hon'ble Judges : K. Ravichandra Baabu, J

Bench : Single Bench

Advocate : S. Visvalingam, for the Appellant; R. Karthikeyan, Addl. Govt. Pleader, for the Respondent

Judgement

Honourable Mr. Justice K. Ravichandra Baabu

1. Prayer in this writ petition is challenging the order passed by the respondent dated 27.11.2006 in his proceedings in ROC A-2/59450/2006 and consequently, directing the respondent to absorb the petitioner in any of the vacancy according to the petitioner's qualification.

2. The case of the petitioner is that his father Chellasamy was serving as Village Administrative Officer in Ilayangudi Taluk of Sivagangai District and died on 27.09.1983, while he was in service. His father left behind him a son, a daughter and his wife. At the time of death of his father, the petitioner was aged about 7 years and his sister was aged about 12 years. The petitioner's mother applied to the respondent in the year 1983 itself, for seeking compassionate appointment to the petitioner and the Revenue Divisional Officer, Sivagangai through his proceedings dated 30.01.1987 advised her to renew the application after the petitioner attains the age of 18 years. When the application for appointment on compassionate ground was renewed in the year 2000, the respondent informed through memo, dated 25.08.2000 to furnish 13 items of documents, which also were furnished by the petitioner in time. However, the petitioner was informed that there was a ban order imposed by Government on new appointments and

therefore, his request for the compassionate appointment would be considered only after the lifting of the said ban order. While that being so, the present impugned order came to be passed by the respondent on 27.11.2006 rejecting the petitioner's application seeking for compassionate appointment solely on the reason that the application received on 08.09.1999 was beyond a period of three years from the date of death of his father. Aggrieved by the said action of the respondent the petitioner filed the present writ petition.

3. Notice of motion was ordered by this Court on 28.02.2007 and the respondent through the learned Additional Government Pleader entered appearance and filed a counter affidavit.

4. The learned counsel for the petitioner argued that the respondent failed to consider the earlier application filed by the mother immediately after the death of the petitioner's father and subsequent correspondence between the petitioner and the respondent calling upon him to produce the necessary documents. It is also argued by the petitioner's counsel that the G.O.Ms.No.120 dated 26.06.1995 issued by the Labour and Employment Department, stipulating the period of limitation of three years for making an application on compassionate ground cannot be applied in the case of the petitioner, as the petitioner's father died as early as in the year 1983 and the first application was submitted in the year 1983 itself.

5. It is contended by the respondent that the petitioner was only aged about one year, at the time of death of the deceased government servant and not seven years as contended by him. The petitioner made an application on 08.09.1999 seeking for appointment on compassionate ground. The mother of the petitioner Rakkammal applied on 05.01.1987 and it was rejected on the ground that no eligible person was available in their family for such appointment, through proceeding dated 30.01.1987 by the Revenue Divisional Officer. According to the respondent, the Revenue Divisional Officer is not empowered to decide the matter. The petitioner's application made on 08.09.1999 was initially admitted and the records for such appointment were called for through proceeding dated 30.05.2005. All the pending applications were only entered into the register of compassionate ground appointments without looking into the eligibility and other conditions. It was only at the time making such appointments, eligibility criteria such as age, educational qualification of the indigent circumstances of the family are checked and if the applicants satisfy all the requisite qualifications they will be appointed. Mere registration in the seniority register is not a guarantee for making an appointment. The respondent further stated that the impugned order was rightly passed by rejecting the claim of the petitioner in view of the fact that the application itself was made beyond the period of three years from the date of death of the petitioner's father. Therefore, the respondent has contended that the relief sought for in this writ petition cannot be granted and consequently, prayed for dismissal of this writ petition.

6. I heard the learned Counsel appearing for the petitioner and the learned

Additional Government Pleader appearing the respondent.

7. The issue involved in this case is as to whether the application submitted by the petitioner can be rejected on the ground that it is made beyond the period of three years by applying G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995.

8. In this case, admittedly, the petitioner's father died on 27.09.1983, while he was in service. Though the petitioner claimed that his mother made an application seeking compassionate appointment of the petitioner immediately after the death of the deceased employee in the year 1983 itself, the respondent contended that the said application from the mother of the petitioner was made only on 05.01.1987 and the same was also rejected on the ground of no eligible person was available in their family for such appointment. In any event, it is admitted by the respondent that the petitioner made an application on 08.09.1999 and through proceedings dated 30.05.2005, the petitioner was called upon to furnish necessary documents for considering his application for compassionate appointment. Therefore, even assuming that the application made by the mother of the petitioner was on 05.01.1987 instead of in the year 1983 as contended by the petitioner, still the fact remains that the petitioner had made the application on 08.09.1999 itself. When admittedly the date of the death of the employee was earlier to 26.06.1995, the date on which, G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995 came to be passed, the respondent cannot apply the three years period of limitation to the petitioner's case. I have considered the very same issue in W.P.No.9946 of 2007, dated 01.02.2012 in the matter of D.Sitha Lakshmi vs. The District Collector, Sivagangai District, Sivagangai and had come to the conclusion that the respondent is not entitled to apply the said G.O. in respect of the application made for compassionate appointment, wherein the date of the death of the deceased employee was prior to the said G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995. The said decision by this Court was made after following various decisions rendered by this Court as discussed therein. Therefore, this case is also similarly covered by the said decision. In fact the impugned proceedings in this writ petition and in W.P(MD)No.9946 of 2007 is a common proceedings indicating the same reason of the limitation for rejecting the application. Hence, by applying the said order made 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, the present writ petition is also allowed and the impugned order is set aside insofar as the petitioner is concerned and consequently, the respondent is directed to consider the claim of the petitioner for compassionate appointment without reference to the limitation period by passing a fresh order on his application dated 08.09.1999 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 respondent with regard to the requisite qualification for the post to which the appointment is to be considered as well as continuance of the indigent circumstances of the family of the deceased making

it eligible for a compassionate appointment even as on today.

9. The writ petition is ordered accordingly. No costs.