
(2013) 02 MAD CK 0195

In the Madras High Court

Case No : Writ Petition (MD) No. 13004 of 2011

K.A. Zia-ul-Huque

APPELLANT

Vs

The Principal District Judge and Another

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) LabIC 3526

Hon'ble Judges : S. Vimala, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; D. Sivaraman and B. Pugalendhi, for the Respondent

Judgement

Chitra Venkataraman, J.—The petitioner seeks for a Writ of Certiorarified Mandamus to quash the order in A-1 No. /07 dated 26.11.2007 on the file of the respondent No. 1 and consequently to direct the respondents to appoint the petitioner on compassionate ground by considering the application preferred by the petitioner dated 16.7.2011. The petitioner is stated to be son of one K.S. Abdul Lathief, who was working as a junior Bailiff in the Subordinate Court at Kovilpatti. On 21.6.1999, he died in harness. Subsequently, his mother, who was receiving the family pension also died on 2.6.2000. The petitioner, as the son of the deceased K.S. Abdul Lathief, is stated to have made a representation on 21.12.2001 seeking compassionate appointment. Further, the petitioner made a representation on 13.4.2003 once again by referring to the earlier representation dated 21.12.2001. On 26.4.2007, once again, he made a representation referring to his representation made on 21.12.2001.

2. In the background of the claim made by the petitioner, the first respondent/learned Principal District Judge sent a communication on 13.6.2007 to the Subordinate Court, Kovilpatti seeking particulars as to whether any application was submitted by the petitioner herein on the dates mentioned by him. Based on the report received, the learned District Judge rejected the petitioner's prayer for appointment on compassionate ground. The order passed by the learned

Principal District Judge, Tuticorin pointed out to the report of the learned Subordinate Judge, Kovilpatti, wherein it is stated that that no application was submitted by the petitioner seeking appointment on compassionate ground on 21.12.2001 and 13.4.2003, and, thus quoting G.O.Ms. No. 120 Labour and Employment (Department) dated 26.06.1995 and G.O.Ms. No. 42 Labour and Employment dated 12.03.2007, the learned Principal District Judge rejected the request on the ground that the application received on 5.4.2006 was beyond the stipulated period of 3 years from the date of death of the government servant. Aggrieved by this, the present Writ Petition has been filed.

3. Learned counsel for the petitioner submitted that when the petitioner had already made request on 21.1.2001 and 13.4.2003, it is incorrect on the part of the first respondent herein to reject the application on the ground that the said application was made only in the year 2006 and hence beyond 3 years. He further pointed out that as on the date of death of his father, the petitioner was a minor and in the year 2002 alone, he attained majority. Thus, in the year 2003, he made a representation followed by subsequent representations. Consequently, the contention by the first respondent that the application was beyond 3 years was not correct. In any event, considering the minority at the time of his father's death, which continued to be so even after another 3 years, his attaining the age of majority thus accruing only in the year 2002, the order passed was incorrect and illegal.

4. On notice, the first respondent/Principal District Judge filed a counter in this case, wherein he has stated that the petitioner made an application to the first respondent on 5.4.2006, 10.4.2006 and 2.12.2006. However, considering the fact that they were beyond 3 years period, the claim was rejected by the learned Principal District Judge. The claim that the petitioner had made an application in the year 2001 - 2003 are not borne out by the records. Subsequently, the petitioner also sent an application before the Hon'ble Chief Justice of High Court on 16.7.2011 and the same was forwarded to the Principal District Judge with a direction to take necessary action immediately thereon. Report was submitted to this Court on 5.9.2011.

5. It is evident from the dates given, the petitioner's father died in the year 1999. Going by the age declaration in the present writ affidavit as 25 years and the date of birth given in the school certificate as 10.11.1984, the petitioner, at least, should have made the application on completion of 18 years. Even though the petitioner contended that he made an application in the year 2001 and 2003, there are no materials to substantiate that the petitioner made any application. Mere reference in the affidavit or the typed copy per se would not be good evidence to accept the case of the petitioner that he made the application within the time stipulated at least on attaining majority. In the circumstances, the only letters which are referred to as received by the first respondent were 5.4.2006, 10.4.2006, 22.12.2006 and 12.6.2007; evidently by 2006, the time, granted for making application seeking com?-" passionate appointment had already expired.

6. In these circumstances, we have no hesitation in rejecting the petitioner's prayer thereby dismissing the Writ Petition. The connected Miscellaneous Petitions are closed. No costs.

7. Learned counsel for the petitioner submitted that considering the difficult financial circumstances, a direction may be issued to the first respondent to consider his candidature for appointment on regular basis. We do not think that this Court can give any such direction since it depends on the availability of post and the sanctioned strength, which are matters to be determined by the administration.