
(2013) 09 MAD CK 0047
In the Madras High Court
Case No : Writ Petition No. 19763 of 2012

N. Komalavathi	Vs	APPELLANT
Director of Elementary Education and Others		RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) 7 MLJ 653

Hon'ble Judges : N. Paul Vasantha Kumar, J

Bench : Single Bench

Advocate : K.R. Gunasekhar, for the Appellant; K. Rajendraprasad, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasantha Kumar, J.—By consent of both sides, the writ petition is taken up for final hearing. This writ petition is filed to quash the order dated 21.4.2011 passed by the District Elementary Educational Officer, Tiruvallur, rejecting the request of the petitioner seeking compassionate appointment on the ground that the petitioner has not applied within three years from the date of death of her father.

2. The brief facts necessary for disposal of the writ petition are as follows:

(a) Petitioner has studied upto SSLC (failed) and belongs to Scheduled Caste community. Petitioner's father, while serving as Regular Office

Assistant in the office of the Assistant Elementary Educational Office, Ekkadu, Thiruvallur District, died on 21.6.1988 leaving behind the petitioner,

her mother and sister. Petitioner's mother is suffering from cancer and petitioner's younger sister expired on 11.4.2008. Petitioner and her ailing

mother are living in indigent circumstance. After the death of the petitioner's

father, petitioner's mother approached the third respondent seeking compassionate appointment.

(b) Petitioner's uncle (father's elder brother) Marimuthu filed a suit in O.S. No. 437 of 1988 before the District Munsif Court, Tiruvallur, in the name of his minor son D.M. Tamilvanan, seeking declaration that he was the adopted son of petitioner's parents, and that he was eligible for a share in the terminal benefits and other retirement and insurance claim, payable to the family of the petitioner, based on an alleged deed of adoption dated 7.11.1986. The said suit was dismissed on 12.8.1996 on the ground that the deed of adoption produced by the plaintiff is not genuine. A.S. No. 23 of 1997 was filed by the said D.M. Tamilvanan challenging the decree and judgment, before the Sub-Court, Tiruvallur. The said appeal was also dismissed on 27.8.1997.

(c) Due to pendency of the said suit and appeal, petitioner and her mother were unable to get legal heirship certificate, which is bound to be produced while seeking compassionate appointment. After getting legal heirs certificate, petitioner's mother submitted an application on 18.11.1999 seeking appointment for petitioner on compassionate ground.

(d) From 1999 to 2009 additional particulars and various certificates were called for and all the said certificates requested by the respondents were submitted. The said application dated 18.11.1999 was rejected by the impugned order dated 21.4.2011 on the ground that the application should have been submitted within three years from the date of death of petitioner's father as per G.O.Ms. No. 202 Labour and Employment Department, dated 8.10.2007.

(e) The said order is challenged in this writ petition on the ground that the said Government Order has no application, and that, G.O.Ms. No. 120 Labour and Employment Department, dated 26.6.1995 was issued prescribing the period of three years from the date of death for submitting application for compassionate appointment and the said order was issued with a specific clause stating that the said Government Order will come into force from the date of issue of the Government Order. The Government also subsequently clarified the said fact through letter dated 11.10.1995 stating that three years period will not apply to the past cases, i.e. if Government servants died prior to 26.6.1995.

(f) Contending as above and having regard to the date of death of petitioner's father on 21.6.1988, limitation of three years period prescribed in

the Government Order cannot have any application, the petitioner has filed this writ petition with the above prayer with a request to reconsider the

application seeking compassionate appointment without reference to the said objection.

3. Heard the learned counsel appearing for the petitioner as well as learned Government Advocate for the respondents.

4. Petitioner's father was employed as a regular Office Assistant in the office of the Assistant Elementary Educational Office, Ekkadu, Tiruvallur

District and while in service, he died on 21.6.1988. Petitioner is the daughter of the deceased D. Natarajan. The presumptive date of retirement of

petitioner's father was 31.7.2005. The legal heirs of the deceased D. Natarajan could not obtain legal heirship certificate to submit application

seeking compassionate appointment immediately, as one Marimuthu, in the name of his minor son D.M. Tamilvanan, filed civil suit in O.S. No. 437

of 1988 before the District Munsif Court, Tiruvallur to declare that D.M. Tamilvanan is the adopted son of the said D. Natarajan, relying on the

adoption deed dated 7.11.1986. The said suit was dismissed on 12.8.1996 holding that the adoption deed was not genuine, against which A.S.

No. 23 of 1997 was filed before the Sub-Court, Tiruvallur, which was also dismissed on 27.8.1997. Due to the pendency of the dispute before

the Civil court, petitioner's mother was also not paid terminal benefits.

5. After disposal of the suit, petitioner and her mother along with her sister applied for legal heirship certificate and thereafter the application for

compassionate appointment was submitted on behalf of the petitioner by her mother on 18.11.1999 i.e. within three years from the date of final

order passed in A.S. No. 23 of 1997. Petitioner studied upto SSLC and certain particulars were called for by the Department and the same were

also produced. The said application was kept pending from 18.11.1999 upto 21.4.2011, i.e., for over 11 years and the same is recognised by the

impugned order stating that the application was not submitted within three years from the date of death of petitioner's father.

6. As stated supra, the right to apply for compassionate appointment accrued to the petitioner only after finalisation of the civil suit on 27.8.1997.

The date of death of petitioner's father being prior to 26.6.1995 as per Government order issued in G.O.Ms. No. 120, dated 26.6.1995 as

clarified by letter of the Labour and Employment Department No. 39924/Q1/95-1, dated 11.10.1995, three year period cannot be applied to the

persons died prior to 26.6.1995. Without considering the said clarification issued by the Government and other relevant facts in this case, the

impugned order was passed by the second respondent.

7. Similar issue was considered by the Division Bench of Madurai Bench in W.A. (MD) No. 14 of 2012 dated 2.8.2013, wherein a person who

was missing from 1987 was declared "civil dead" by order of the Civil Court dated 17.12.1998, which was confirmed in A.S. No. 209 of 1999

on 30.2.2001. The application submitted on 7.5.2001 in that case was directed to be considered without reference to the objection regarding

submission of application beyond three years from the date of missing and directed the department to appoint the said appellant on compassionate

ground within two months as the right to apply to the appellant crystallised only on 30.2.2001.

8. Here in this case, petitioner's sister is no more and her mother is also a cancer patient and she is taking treatment. The Tahsildar, Oothukottai, in

his certificate dated 23.8.2013 certified that no one in her family is employed and the annual income of the family through family pension is only Rs.

67,080/-.

9. Taking into consideration all the above facts, particularly on the basis of the certificate issued by the Revenue Official dated 23.8.2013, I am of

the view that the claim of the petitioner is bound to be considered by the second respondent without reference to the objection raised in the

impugned order i.e. not submitting application within three years from the date of death of petitioner's father. In the result, the writ petition is

allowed. The impugned order is set aside. The second respondent is directed to consider the application of the petitioner dated 18.11.1999

seeking compassionate appointment, without reference to the reasons stated in the impugned order and pass fresh orders, within four weeks from

the date of receipt of copy of this order. No costs.