

(2012) 02 MAD CK 0134
In the Madras High Court
Case No : W.P (MD) No. 8030 of 2009

R. Paramasivam

APPELLANT

Vs

The Director Rural Development and Panchayat Raj,
Sytapettai, Chennai, The District Collector, Pudukkottai and
The Block Development Officer, Officer of the Panchayat
Union

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Citation : (2012) 02 MAD CK 0134

Hon'ble Judges : K. Ravichandra Baabu, J

Bench : Single Bench

Advocate : P. Ganapathy Subramanian, for the Appellant; R. Karthikeyan Addl. Govt. Pleader For R1 and R2 and Mr. K.A. Thirumalaiappan For R3, for the Respondent

Judgement

K. Ravichandra Baabu, J.—The writ petition has been filed challenging the order of the 3rd respondent in Na.Ka.A1/4779/2008 dated

23.03.2009 and consequently, to direct the respondents to provide the petitioner an appointment on compassionate ground. The case of the

petitioner is that his father was employed as Gang mazdoor at the office of the 3rd respondent and died on 26.12.2003 due to heart-attack and he

had rendered 39 years of service till his death. His father left behind his wife and five children as his legal-heirs. After the death of his father, the

petitioner's mother submitted an application on 21.06.2004 before the second respondent seeking for compassionate appointment to the

petitioner's elder brother, namely, one Ravichandran. On 28.06.2004, the second respondent informed that the said application would be

considered only after lifting of the ban imposed by the Government for making

fresh appointment. Again, after lifting of the ban by the Government, the petitioner's brother submitted an application to the 3rd respondent on 09.11.2006 seeking for an appointment on compassionate ground by enclosing all necessary certificates. The second respondent had also recommended to relax the age of the petitioner's brother as he had possessed M.A., B.Ed., qualification. However, the first respondent rejected the request through his proceedings dated 26.07.2007 on the ground that the petitioner's brother was over aged. Thereafter, the petitioner had applied for appointment on compassionate ground on 03.08.2007 and the respondents 2 and 3 had also recommended the same to the first respondent. However, the 3rd respondent passed an order on 23.03.2009, impugned in this writ petition, rejecting the petitioner's application on the ground that the same was made beyond the period of three years. Therefore, the petitioner has filed the present writ petition.

2. Notice of motion was ordered by this Court on 17.08.2009 and the respondents entered appearance through their respective counsel. The second respondent filed a counter affidavit.

3. It is contended by the second respondent that the petitioner's father died on 26.12.2003 while he was in service and his wife Govindammal made an application on 21.06.2004 seeking for appointment on compassionate ground to her elder son Ravichandran and as there was a ban on appointment, the said request was not considered. Again by an application dated 09.11.2006, the wife of the deceased sought for compassionate appointment to her elder son and the same could not be considered as the said person crossed the upper age limit and consequently became ineligible for any appointment. Thereafter, the petitioner had submitted an application on 03.08.2007 and the same was considered and rejected by applying G.O.Ms. No. 120, Labour and Employment Department, dated 26.06.1995, since the said application was submitted after three years and seven months from the date of death of the petitioner's father. It is further stated by the second respondent that in Government Letter No. 202, Labour and Employment Department, dated 08.10.2007, it has been clarified that the time limit of three years for submission of application is applicable to all cases including where the government servant had died in service even prior to 26.06.1995. Therefore, it is contended by the

second respondent that the writ petition deserves no merits and consequently, liable to be dismissed.

4. I heard the learned Counsel appearing for the petitioner and the respondents.

5. The learned Counsel appearing for the petitioner argued that the reasoning assigned in the impugned order to reject the claim of the petitioner is

not justifiable in view of the fact that the mother of the petitioner, immediately after the death of the deceased, made an application on 21.06.2004

itself seeking for compassionate appointment to the petitioner's elder brother. The said application was rejected only on a technical ground that the

petitioner's brother Ravichandran was over aged on the date of considering the said application. Therefore, according to the learned Counsel

appearing for the petitioner it was not a rejection of the application on merits and when the petitioner had immediately applied on 03.08.2007 after

the said rejection order, the said application has to be treated only as an application in continuation of the earlier application filed by the petitioner's

mother, dated 21.06.2004. Therefore, it is contended by the learned Counsel appearing for the petitioner that the second respondent is not

justified in rejecting the claim of the petitioner on the ground that it is a belated one. In support of his contention, the learned Counsel appearing for

the petitioner cited a decision of the Hon'ble Division Bench of this Court reported in 2007 Writ L.R. 306 in the matter of Tmt. P. Rajamani vs.

The Chairman, Tamil Nadu Electricity Board and 2 others.

6. Per contra, the learned Additional Government Pleader appearing for the respondents 1 and 2 contended that the petitioner's application made

on 03.08.2007 was admittedly after a period of three years from the date of the death of his father and therefore, applying G.O.Ms. No. 120,

Labour and Employment Department, dated 26.06.1995 and Government letter No. 202, Labour and Employment Department, 08.10.2007, the

application of the petitioner has been rightly rejected by the respondents.

7. I have considered the rival submissions made by the respective counsel for the parties.

8. In this case, the admitted fact is that an application for compassionate appointment was made by the petitioner's mother on 21.06.2004 within a

period of six months from the date of the death of the deceased. The said application seeking for compassionate appointment to the elder brother

of the petitioner was rejected only on the ground that the said person was over aged on the date of consideration of his application. On the other hand, while passing the said order on 26.06.2007 rejecting the claim of the petitioner's brother, it was not stated therein that the family was not in distress stage and the indigent circumstances did not exist. Even in the counter affidavit filed by the second respondent it is nowhere stated that the family of the deceased is not under the indigent circumstances so as to reject the request of compassionate appointment. As the said application of the petitioner's brother was rejected only on the technical ground, namely, he was over aged and not on any other grounds, the subsequent application made by the petitioner on 03.08.2007 has necessarily to be treated only as a continuation of the application made by the family seeking compassionate appointment. At this juncture, it is to be seen that the object behind giving compassionate appointment to any member of the family of the deceased is not to satisfy the requirement of the particular individual applicant but to satisfy the requirement of the whole family so as to help them to come out from the sudden distress and indigent circumstances due to the loss of the breadwinner of the said family. When the petitioner had made an application within a week from the date of rejection of the application of his brother, it only shows that the real need of the family for compassionate appointment in order to come out from the indigent circumstances. Therefore, I hold that the application made by the petitioner on 03.08.2007 is an application in continuance of the earlier application made by the mother of the petitioner on 21.06.2004 and not a fresh one. Consequently, the application made by the petitioner on 03.08.2007 is to be treated as made within the period of three years and hence the respondents are not justified in applying G.O.Ms. No. 120, Labour and Employment Department, dated 26.06.1995 to reject the claim of the petitioner. I had taken a similar view in my 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, wherein at paragraph 15, 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 similar circumstances, the Hon'ble Division Bench of this Court in a decision reported in 2007 W L.R. 306 in the matter of Tmt. P. Rajamani

vs. The Chairman, Tamil Nadu Electricity Board and 2 others, at paragraphs 6 and 7 has held as follows:

6. Having heard the submission made by the learned counsel for the respondents, we are not able to appreciate and accept the stand of the

respondents. We hasten to state that the very purport of extending a helping hand to a destitute on the death of her husband by way of

compassionate appointment would get defeated if such claims are turned down on such hyper technical ground. In the case on hand, as noted

earlier, after the death of the appellant's husband on 15.11.1996, an application was made on 07.04.1997 for compassionate appointment for her

elder son. Therefore, there was an application for compassionate appointment within five months from the date of death of her husband. It was

unfortunate that the said application came to be rejected on the ground that her elder son was over aged. Such rejection was made only on

05.12.1998. Therefore, the appellant had to necessarily wait for some more time in order to renew her claim for appointment of her younger son

who was running 18 years as on 11.11.1999. The said younger son completed his 18 years on 15.03.2000. Nevertheless, the appellant wanted to

ensure that an application was made on 11.11.1999 itself for that son in order to confirm that an application for compassionate appointment was

made well within time i.e., before 14.11.1999 by which time the three years period from the date of death of her husband would come to an end.

Subsequently, on 01.04.2000, her younger son himself renewed the application preferred by the appellant on 11.11.1999 by making another

application along with the no objection letters of his other brothers. Therefore, all the above steps taken by the appellant go to show that she was

diligently pursuing her claiming for compassionate appointment over the death of her husband right from the year 1997 till 01.04.2000. In such

circumstances, when the appellant being a widow and since she had no other source of livelihood, the respondents should have been much more

sympathetic and practical in considering the claim of the appellant for compassionate appointment to her younger son based on the application

dated 11.11.1999 and 01.04.2000. In this context, the decision relied upon by the learned Counsel for the appellant reported in T. Meer Ismail

Ali Vs. The Tamil Nadu Electricity Board and The Superintending Engineer, Tamil Nadu Electricity Board, as well as the decision of the Division

Bench reported in 2005 W.L.R.257, cited supra, fully supports the claim of the appellant. As far as the decision reported in National

Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another, is concerned, that was a case where the application came to be

made nearly after 10 years after the death of the deceased employee. Further, the Hon'ble Supreme Court has noted that the application was

made to the appellant Corporation therein which was not answerable to the claim of the applicant for compassionate appointment. Therefore, the

facts involved in that case have no application to the facts of the case on hand. The ratio laid down therein cannot, therefore, be applied to the facts

of this case.

7. For all the above reasons, we are convinced that the claim of the appellant for compassionate appointment for her younger son Navamani ought

to have been favourably considered by the respondent Board. The rejection of the appellant's claim by the communication dated 24.09.2001 by

the second respondent as well as the communication dated 12.07.2002 by the third respondent are therefore not justifiable and accordingly, the

same are set aside. The writ appeal stands allowed. The respondents are directed to entertain the application of the appellant dated 11.11.1999

along with the application of her younger son Navamani dated 1.4.2000 and pass appropriate orders for granting compassionate appointment to

the younger son of the appellant expeditiously, preferably within three months from the date of receipt of a copy of this order.

10. In the said decision, it has been categorically held that very purpose of extending a helping hand to the family of the deceased would get

defeated, if such claims are turned down on such hyper-technical ground. In this case, the respondents have not rejected the claim on any other

ground except on the ground of limitation. In this writ petition, it is also stated by the petitioner that he is hailing from a poor family and except the

earning of his father, there is no other source of income for the family and they are also not having any immovable property. It is also stated by the

petitioner that the entire earning of his father had been spent for the education of the children and the marriage of the two sisters of the petitioner.

Even the death benefits of his father had been utilized towards the marriage of the sisters. These averments made by the petitioner have not been

denied by the respondents in the counter affidavit. Therefore, by considering all the facts and circumstances of the case and the decision rendered

in 2007 W L.R. 306, (Tmt. P. Rajamani vs. The Chairman, Tamil Nadu Electricity Board and 2 others), I set aside the impugned order passed by

the 3rd respondent and remit the matter back to the 3rd respondent for his consideration of the claim of the petitioner for his compassionate

appointment based on his application dated 03.08.2007 without reference to the period of limitation of three years and to pass orders 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. The writ petition is ordered

accordingly. No costs.