

(2016) 01 MAD CK 0009

In the Madras High Court

Case No : W.P. (MD) No. 1410 of 2016 and W.M.P. (MD) No. 1168 of 2016

S. Ramakrishnan

APPELLANT

Vs

Chief Educational Officer, Tirunelveli, Tirunelveli District and
others

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 MLJ 570

Hon'ble Judges : D. Hariparanthaman, J.

Bench : Single Bench

Advocate : Aayiram K. Selvakumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J. - The father of the petitioner was a sweeper in the I.C.I. Government Boys Higher Secondary School, Tenkasi, Tirunelveli District. He died on 04.10.2003 while he was in service. He left behind him the mother of the petitioner, the petitioner and the three sisters of the petitioner.

2. On the death of the father of the petitioner, the mother of the petitioner gave application for compassionate appointment on 01.09.2006. The same is not disputed as it is found in the impugned order. The Department did not provide employment to the mother of the petitioner. The application given by the mother of the petitioner was under consideration. It is a different matter if the mother was offered compassionate appointment and she did not join duty. Before any order is passed on her application, another application was given on 29.09.2006 itself requesting to provide compassionate appointment to the petitioner. The request to provide compassionate appointment to the petitioner was rejected by the impugned order dated 06.01.2014 on the ground that when the initial application was made, no such request was made to give compassionate appointment to the petitioner and once a dependent is nominated to get compassionate appointment, the same cannot be changed. Repeated

representations dated 21.04.2008 and 29.10.2012 were also given by the petitioner seeking compassionate appointment and the impugned order refusing to give compassionate appointment disclose these representations. Further it is stated that the application dated 29.09.2006 seeking compassionate appointment to the petitioner is beyond 3 years from the date of death of the deceased Government servant. Hence the petitioner has filed this writ petition, questioning the order dated 06.01.2014.

3. By consent of the learned counsel on both sides, the writ petition itself is taken up for final disposal.

4. The learned counsel for the petitioner submitted that the impugned order is arbitrary, illegal and unjust and it is liable to be set aside and he relied on the following judgments in support of his contentions:

(a) Order of this Court dated 09.03.2012 made in W.P.(MD)No.8129 of 2010 in S. Malathi v. The Tamil Nadu Electricity Board;

(b) Judgment of this Court in A. Uma Rani v. The Director of school Education, College Road, Nungambakkam, Chennai and another, reported in CDJ 2015 MHC 7584;

(c) Judgment of this Court in A. Ananth v. The Chairman, TANGEDCO, NPKR Maaligai, Chennai and others, reported in CDJ 2015 MHC 841; and

(d) Judgment of a Division Bench of this Court in W.A.(MD)No.1400 of 2011 dated 16.12.2015, in S. Velraj v. The Superintending Engineer, Tamil Nadu Electricity Board, Tirunelveli Electricity Distribution Circle, Tirunelveli and another.

5. Heard the learned counsel on either side.

6. It is not in dispute that the mother of the petitioner made application dated 01.09.2006 within a period of three years from the date of death of the father of the petitioner. Therefore the subsequent application dated 29.09.2006 seeking compassionate appointment to the petitioner has to be read as the continuation of the said representation dated 01.09.2006. It cannot be said that the application was made seeking compassionate appointment beyond 3 years in view of the first application dated 01.09.2006. It is a different matter if the first application itself was made on 29.09.2006 seeking compassionate appointment. Hence, I am not in agreement with the submission made by the learned Government Advocate that the application was made beyond 3 years. In fact, no such reason is given in the impugned order. Furthermore, the only reason given in the impugned order is that since the application dated 01.09.2006 was made requesting compassionate appointment to the mother of the petitioner, thereafter, there cannot be a change of nomination for providing compassionate appointment. In this connection, it is useful to extract the following paragraph of the impugned order:-

Ma;t[bra;jjpy; Kjypy; ntiynfl;L tpz;zg;gpj;j jpUkjp.R.ntyk;khs; vd;ghh;

gzptha;g;g[nfhhp tpz;zg;gpf;fhky; md;dhh; kfDk; 5tJ thhpRkhd R.,uhkfpU\ \;zDf;F gzp tha;g;g[nfhhp tpz;zg;gpj;J cs;shh;. md;dhh; tpz;zg;gk; muR fojk; vz;. 38454/gzp9(1) 2007 ehs;. 27.12.2007y; jw;nghJ eilKiwapy; cs;s murhizfspd;goa[k;> ,we;j muR CHpahpd; xU thhpRjhuUf;F tpz;zg;gpj;Jtpl;L gpd;dh; kw;bwhU thhpRjhuUf;F (Attonnative legal fiair) gzp epakdk; tHq;f ,j;jpl;l;jpy; tHptif bra;ag;gltpy;iy vd;w tpguk; bjhptpf;fg;gLfpwJ.

The Government letter dated 27.12.2007 is relied on, in the impugned order. In my view, such procedure is arbitrary. Simply the request for compassionate appointment cannot be rejected like this. It is a different matter if compassionate appointment is provided to the mother and the mother did not take up the employment and she wanted to provide the employment to the petitioner, who is the son. On the other hand, the application dated 01.09.2006 seeking compassionate appointment was only under consideration. Before the same was acted upon, request was made changing the nomination. With regard to this, it has to be only seen that the other dependents are not opposing for giving compassionate appointment to the dependent concerned. As rightly pointed out by the learned counsel for the petitioner, the judgments relied on by him, supports his claim. Hence the impugned order dated 06.01.2014 passed by the second respondent, is quashed and a direction is issued to the respondents to provide compassionate appointment to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order, if he is otherwise eligible.

7. The writ petition is allowed in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.