

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.118 of 2015

D.Sankar ... Appellant/ Petitioner

Vs.

- 1.The Chief Director,
Construction and Maintenance,
Highways Department,
Chepauk,
Chennai-600 005.
- 2.Divisional Engineer,
Construction and Maintenance,
Highways Department,
Tiruvannamalai-606 601.
- 3.The Assistant Divisional Engineer,
Highways Village Work Department,
Cheyyar-604 407,
Tiruvannamalai District. ... Respondents/ Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 01.09.2014 made in W.P.No.32804 of 2012.

praying to issue a writ of certiorarified mandamus to call for the records in Ku. No. 2127/2012/A2 dt 17.10.2012 on the file of the 2nd respondent and quash the same and consequently direct the respondents to consider and appoint the petitioner on compassionate grounds for the post of Office Assistant in the Department of the 1st respondent.

For Appellant : Mr.K.Balamurali
for Mr.Shivakumar

For Respondents: Mr.P.S.Sivashanmugasundaram, Spl.G.P.

JUDGMENT

(Judgment of the court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal is directed against the order dated 01.09.2014 passed in W.P.No.32804 of 2012, wherein and whereunder the writ petition filed by the appellant / writ petitioner was dismissed.

2. The indisputable facts leading to filing of the instant appeal are that the father of the appellant, namely, Thiru M.Danapal, while working as Gang Mazdoor in the office of the Assistant Divisional Engineer, Highways, C&M, Cheyyar, died in harness on 28.9.1989. The date of the retirement of Thiru M.Danapal from service was on 31.3.1991 on attaining the age of superannuation. The appellant, at the time of death of his father, was about 17-1/2 years. Thereafter, the appellant made an application for compassionate appointment on 2.4.1997 in the office of the third respondent, which was further forwarded to the first respondent and received on 27.7.1998. It appears that the appellant was not communicated any response before a letter dated 17.10.2012 from the office of the second respondent, rejecting the application for compassionate appointment, was sent to him. Feeling aggrieved, the appellant came up with the instant writ petition, seeking for the relief to quash the said letter and consequently, to direct the respondents to consider and appoint the petitioner on the post of Office Assistant in the first respondent Department on compassionate ground.

3. The learned Single Judge, examining all facts of the case, relying on a decision of the Supreme Court *Bhawani Prasad Sonkar v. Union of India and others*¹, came to the conclusion that the application of the petitioner was barred by limitation on having been filed after a period of nine years from the date of death of the deceased employee, i.e., father of the petitioner.

4. The learned counsel appearing for the appellant before us would submit that the application ought not to have been dismissed on the ground of delay in making the application for compassionate appointment as his father had three wives having several children. Thus, some time was taken to resolve the dispute before making an application on 2.4.1997. Thereafter, the application of the appellant was taken into consideration and as averred in the counter affidavit of the respondents, was assigned Serial No.195 in the waiting list applications. It is further urged that since the respondents had taken time to consider the application from 1997 till the impugned communication dated 17.10.2012, the application ought not to have been thrown out at this stage on the ground of delay.

5. On the other hand, the learned counsel appearing for the

¹ (2011)4 SCC 209.

respondents would submit that the purpose of compassionate appointment is to provide immediate succor and relief to the dependent member of the family of the deceased employee. Secondly, no compassionate appointment can be granted dehors the compassionate appointment policy, rules and regulations. It is further contended that the application was listed, but decision was not taken. Thus, it cannot be contended by the appellant that since there was delay in taking decision, the compassionate appointment policy should be ignored. It is lastly contended that at the time of death of the deceased employee, relevant policy was G.O.Ms.No.560, Labour and Employment Department dated 03.08.1977, which provides for making an application till the date of superannuation of the deceased employee in normal course. It was subsequently amended by G.O.Ms.No.120 dated 26.06.1995, providing the time limit for making an application, i.e., three years. Since the application was filed after G.O.Ms.No.120 was introduced, the application of the appellant was rightly rejected.

6. We have heard the learned counsel for the parties, carefully examined the pleadings and documents appended thereto.

7. The facts that the father of the appellant died in harness on 28.09.1989 is not in dispute. It is also not in controversy that in normal course, the father of the appellant would have retired from service on 31.3.1991 on his attaining the age of superannuation. Filing of the application for compassionate appointment on 2.4.1997 in the office of the third respondent, which was forwarded and received in the office of the first respondent on 27.7.1998 was not doubted by either party. It is true that at the time of death of the father of the appellant, the age of the appellant, taking his date of birth as on 20.2.1972 was 17-1/2 years. The appellant became eligible for consideration immediately after six months. However, he had chosen to file the application to consider him for appointment only after about a period of nine years. G.O.Ms.No.560 dated 3.8.1977, which was prevalent at that point of time at the time of death of the deceased employee, provides as under :

"(1) (b) In future, requests for appointment of dependants of the Government servants who died prior to 15.2.1972 can be considered favourably and proposals sent to Government in the following type of cases:

At the time of consideration of his dependant's case for appointment the Government servants presumptive date of superannuation (i.e., had he lived) should not have been reached. In other words, the grant of the concession would be considered only upto the presumptive date of superannuation of the Government servant. For example, if a Government servant dies in 1965 and the date of his superannuation would have been 1.10.1981 if he were alive, his dependent can apply for a post on the date prior to 1.10.1981 only."

8. In the case on hand, the deceased employee in the normal course would have retired from service on 31.3.1991. Thus, in view of the aforestated time schedule prescribed under the aforestated G.O dated 3.8.1977, the appellant was permitted to make application only till 31.3.1991. But the appellant had made an application only after five years from that date. Thus, the very purpose of granting compassionate appointment in case of untimely death of the employee in harness stands defeated. Thereafter, the policy was amended by G.O.Ms.No.120 dated 26.6.1995, wherein it was provided that the application for appointment on compassionate grounds should be made within three years of the death of the Government servant. Secondly, maximum age limit for such appointment be raised to 50 in the case of widows of the deceased Government servants. But, the case on hand would be governed by the earlier Government Order which was prevalent at the time of death of the father of the appellant, not the subsequent Government order.

9. As far as the question of rejecting the application belatedly is concerned, there is no dispute that the application of the appellant for compassionate appointment was received beyond the time limit. Thus, it was rightly rejected. However, since the officers had not taken action immediately which is required to be done, particularly in case of the application for compassionate appointment, liberty is reserved to the appellant/ writ petitioner to take recourse to the competent forum for claiming damages / compensation, if so advised, under the provisions of law. At this stage, we must observe that the lackadaisical attitude of the officers in not considering the application at the earliest defeats the purpose of the application. Thus, the officers are expected to discharge their functions properly, keeping in view the fact that they are trustees of public faith and interest.

10. The compassionate appointment is not an appointment in accordance with the constitutional scheme of employment. Consideration of the application in violation of the provisions of Article 14 and 16 of the Constitution of India cannot be held as legal way of appointment. However, it is well settled proposition of law that to provide succor and immediate relief to the dependent family, who had fallen in penury and suffering on account of untimely death of the Government employee in harness, the Government is held as competent to frame a proper policy to consider the applications of dependent family members of the deceased employee for appointment on compassionate basis. However, in absence of the same, no appointment on compassionate basis may be held as proper and valid.

11. In Umesh Kumar Nagpal Vs. State of Haryana and others², the Supreme Court had observed as under :

"2.....The whole object of granting compassionate employment is thus to enable the family to tide over

2 (1994) 4 SCC 138.

the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family....."

It was further held as under :

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

12. The aforesaid proposition of law was referred to with approval in the subsequent decisions of the Supreme Court, i.e., Jagdish Prasad v. State of Bihar³, Haryana SEB v. Hakim Singh⁴, State of U.P. v. Paras Nath⁵, Director of Education (Secondary) v. Pushpendra Kumar⁶, State of J&K v. Sajad Ahmed Mir⁷, Bhawani Prasad Sonkar v. Union of India¹, and CCE & Customs v. Prabhat Singh⁸.

13. Recently, in MGB Gramin Bank v. Chakrawarti Singh⁹, it was held as under:

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a Government employee in harness does not entitle the family to claim compassionate

3 (1996) 1 SCC 301.

4 (1997) 8 SCC 85.

5 (1998) 2 SCC 412.

6 (1998) 5 SCC 192.

7 (2006) 5 SCC 766.

1 (2011) 4 SCC 209.

8 (2012) 13 SCC 412.

9 (2014) 13 SCC 583.

employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

Thus, the law is well settled that the appointment on compassionate ground is to tide over the penurious condition of the dependent family members of the deceased employee dying in harness, in accordance with the policy.

14. As a sequel, for the reasons mentioned herein-above, the writ appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vvk

To

1.The Chief Director,
Construction and Maintenance,
Highways Department,
Chepauk, Chennai-600 005.

2.Divisional Engineer,
Construction and Maintenance,
Highways Department,
Tiruvannamalai-606 601.

3.The Assistant Divisional Engineer,
Highways Village Work Department,
Cheyyar-604 407, Tiruvannamalai District.

1 cc to Government Pleader, sr. 13850

1 cc to Mr.Shivakumar and Suresh, Advocate, Sr. 13453

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