

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO

and

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10683 of 2015

J.Naveen Raj

... Petitioner

Vs.

1.The District Judge,
Thiruvannamalai District,
Thiruvannamalai.

2.K.G.Paranthaman

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of certiorarified mandamus to call for the records relating to the impugned proceedings R.O.C.No.3155/A/2015 dated 26.02.2015 issued by the District Judge, Thiruvannamalai, the 1st respondent herein and quash the same and consequently, direct him to provide the petitioner with compassionate appointment.

For Petitioner : Mr.J.Thilagaraj

For Respondents : Mrs.A.Sri Jayanthi,
Special Government Pleader (R1)
R2 - no appearance

O R D E R

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J.)

Hard cases cannot make bad law. The present case is one of the hardest that we had to deal with. The petitioner is an young person, who is terribly disappointed that his request for appointment on compassionate grounds has been turned down by the learned District Judge, Thiruvannamalai, by his proceedings dated 26.02.2015 and hence, instituted this Writ Petition challenging the same.

2.The Writ Petitioner's mother Smt.B.Santhabai, while working as Typist in the Court of Principal District Munsif at Thiruvannamalai, died leaving the Writ Petitioner to face the hard realities of life, a little too soon. The Writ Petitioner

appears to be born on the Republic Day in the year 1995. Soon thereafter on 08.09.1998, his father passed away. The Writ Petitioner's mother also passed away on 22.11.2006, leaving behind the Writ Petitioner and a far younger step-brother to him. The maternal grandfather of the Writ Petitioner appears to have taken care of the Writ Petitioner ever since the death of his mother. On 07.03.2011, since the Writ Petitioner has completed 16 years of age, by then, the maternal grandfather-cum-guardian-cum-next friend of the Writ Petitioner appears to have submitted an application to the learned District Judge, Thiruvannamalai, seeking appointment of the Writ Petitioner on compassionate grounds. On 05.03.2014, no sooner, than he attained the age of majority, the Writ Petitioner himself submitted an application seeking appointment on compassionate grounds and followed it up by another application on 24.11.2014. On 26.02.2015, the application of the Writ Petitioner was rejected by the learned District Judge on the ground that the application seeking appointment on compassionate grounds has been made beyond the three years period specified for the submission of such applications. Hence, this Writ Petition.

3.It is not in dispute that as per the policy decision taken by the State Government, the person seeking appointment on compassionate grounds has to submit necessary application before the expiry of three years period from the date of the death of the bread-winner. Since in the instant case, the earliest application was submitted by the Writ Petitioner on 05.03.2014, which is more than seven years after the expiry of the Writ Petitioner's mother, the said application has been rejected by the impugned order.

4.Making appointments on compassionate grounds is more in the form and nature of an exception to the general requirement and principle of throwing open the public employment to compete by all concerned. Every eligible candidate has the right to be considered for public employment. However, by prescribing various modes of recruitment, some posts in public services are not made available for competition by one and all.

5.The recognised modes of recruitment of public employment are (1) by direct recruitment from the open market; (2) by way of promotion from a lower category of posts; (3) recruitments by transfer from same or similar services; and (4) by way of temporary deputation from one another Unit or Department or Organisation or the other.

6.However, over a period of time, due to the increased number of sudden and premature deaths of public servants, leaving the family in distressful conditions, the necessity for the Government to consider providing some help to the surviving members of the family of the deceased public servant, as arisen.

By providing employment to one of the suitable members of the family, which does not have any other earning member therein, the State Government will help the distressed family members to overcome the extreme hardship that they have been made to face suddenly due to the disappearance of the bread-winner. But at the same time, the essential principle upon which this benefit of appointment on compassionate grounds is rested is, that, firstly, there is no other earning member in the family and secondly, the family members are left high and dry without there being any serious avenue of income so that they can survive the hardship. If a family can survive for a number of years entirely on their own, perhaps, an inference can be drawn that the family has not been reduced to conditions of penury. It is, in this regard, that a reasonable time period for making appointments on compassionate grounds has been fixed. Hence, the State Government has come up with a time limit of three years.

7. Apart from the civil servant enjoying the status as such, upon his death, if his family members, who are surviving are not to be taken care of by the State, the prospects are such that a negative image can be spread in the Society that the State never bothers for the well being of the dependants of the Government servants, who died in harness. It is to avoid any such negative image gaining ground, the State Government as a socio welfare measure, has put in place a mechanism for providing employment to one of the eligible dependants of the family of the deceased Government servant. Several meaningful conditions are attached to be complied with before hand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be thrown open to competition for one and all. All members, who are eligible to be so recruited, should be permitted to compete and the best amongst them found suitable can alone get employment. Therefore, an exception is sought to be carved out, from this constitutionally assured mechanism of filling up public employment while providing for making appointments on compassionate grounds. Possibly, conditions can be stipulated such as that at the time of death, the left over service of the deceased employee before he attains the age of superannuation should not be less than a reasonable period, say three years or at best five years. Because, by then, possible, the Government servant would have rendered qualifying length of service to fetch his dependants family pension. Similarly, a stipulation that appointment on compassionate grounds should be claimed as quickly as possible after the death of the civil servant, a duration in this regard can be prescribed not to exceed by a reasonable length of time of say three years or at best five years. If the surviving members of the civil servant, who died, can get along and carry on their show for considerable length of time after the departure of the breadwinner, in a reasonable manner, inference can be drawn from that the family of the deceased civil servant is able to fend for itself,

notwithstanding the loss of the breadwinner. The period of endurance of such a family holds out an assurance that the family has got over the trauma caused by the departure of the breadwinner and it has the necessary social resources to carry on with the show in his absence as well.

8. In no case, the time limit prescribed for entertaining the claims for compassionate appointment should be kept open for decades. Any attempt to entertain any such claim would convert the scheme of making compassionate appointments into a different form of hereditary employment. It would also tend to convert the scheme of compassionate appointments into a source of recruitment altogether and both the aforementioned factors are not the pursuits, which should be allowed to be undertaken or encouraged by the State Government and its organs.

9. As a policy, the State Government has announced three years period for making any such application for appointment on compassionate basis. We do not see any justifiable reason for us to interfere with the impugned order passed by the learned District Judge, which in effect, is in conformity with the policy decision of the State Government.

10. It is for the State Government to consider whether it is appropriate and feasible to provide for a longer period of time for making applications seeking compassionate appointments, where the family of the public servants, who died in harness, is comprising of minor children and there being no other eligible family member who can seek such an appointment in the meantime. It is for the State Government to take an appropriate decision in that regard.

11. With this, the Writ Petition is dismissed. No costs.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar

To

1. The District Judge,
Thiruvannamalai District,
Thiruvannamalai.

+2cc to M/S. Thilagaraj, Advocate Sr. 13716

W.P.No.10683 of 2015

RSI (CO)
VR(17/03/2017)