

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11640 of 2015

G.Yuvaraj

.. Petitioner

Versus

1. The Director of School Educational
College Road, Chennai - 6
2. District Educational Officer,
(South Chennai) Egmore,
Chennai - 600 008.
3. The Headmaster,
Government Higher Secondary School,
Kodambakka, Chennai - 600 024.

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of CERTIORARI FIED MANDAMUS, to call for the records of the 2nd respondent pertaining to the impugned order in O.Mu.No.8259/A1/2006 dated 13.02.2014 quash the same and consequently direct the respondents to provide an appointment to the petitioner under the compassionate ground in the 3rd respondent's school within a reasonable time.

For Petitioner : Mr.A.Chandrasekar

For Respondents : Mr.K.Dhanajeyam

Special Government Pleader

O R D E R

The relief sought for in this writ petition is for compassionate appointment. The father of the writ petitioner was employed as an Office Assistant in the Government Higher Secondary School, Kodambakkam and died in harness on 19.01.2000, while he was in service.

2. The learned counsel appearing for the writ petitioner submitted that initially an application for compassionate ground appointment was submitted by the mother of writ petitioner on 10.03.2000. But, no action was taken by the respondents and thereafter the writ petitioner submitted an application seeking compassionate appointment on 19.02.2007. The application submitted by the writ petitioner on 19.02.2017 was rejected by the second respondent in proceedings dated 13.02.2014, on the ground that the writ petitioner has not submitted any application for compassionate appointment, within a period of three years from the date of the death of the deceased employee.

3. The learned counsel for the writ petitioner contended that the reason is wrong, in view of the fact that the original application seeking compassionate appointment was submitted on 10.03.2000 itself by the mother of the writ petitioner and that is the date to be taken into account for reckoning the period of 3 years not the date on which the writ petitioner submitted the application, seeking compassionate appointment on 19.02.2007.

4. The arguments advanced by the learned counsel for the writ petitioner, that the original application was submitted within 3 years, is opposed by the learned Special Government Pleader, on the ground that the original application was submitted by the mother and the subsequent application dated 19.02.2007 was submitted by the writ petitioner and the gap between these two applications itself is about seven years.

5. May that it be, the fact remains that the deceased employee passed away on 19.01.2000 and thereafter the application is made, but neither the writ petitioner nor his mother, pursued the matter in between the years 2000 and 2007. The second respondent also after a lapse of seven years, rejected the claim of the writ petitioner. However, this Court has to consider the legal principles governing in the scheme of compassionate appointment.

6. No doubt, both the writ petitioner as well as the respondent, jointly delayed the matter with regard to the consideration of the application submitted by the writ petitioner, seeking compassionate appointment. But, this Court has to consider the legal principles in this regard, since the opportunity of public employment to be extended to all citizens of this country and the principle of equality enshrined in Articles 14 and 16 of the Constitution, to be followed scrupulously provided to all citizens.

7. All public appointments are to be made only through constitutional schemes, by providing equal opportunities to all citizens of this Great Nation. The Scheme of compassionate

appointment is an exception and thus the appointment on compassionate ground to be made only in exceptional circumstances under the terms and conditions of the scheme framed by the Government in this regard from time to time.

8. The Courts also laid down the principles considering the various aspects and to see that the appointment on compassionate ground, cannot be made as a regular recruitment process.

9. In this view of the matter, it is useful to extract the earlier discussion made by this Court in W.P.No.1207 of 2015 dated 18.01.2017 as follows:

"3. India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavour for promoting the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment opportunities to the members of the family of the deceased Government servants has arisen.

4. A Government servant is expected to give his full time attention and energy and render his very best of attention for securing faithful implementation of various schemes and welfare measures brought in place by the State Government, he is termed as a round the clock servant of the State and he should devote and dedicate himself for providing good quality services to the citizens. Should, unfortunately, any such employee die in harness, his family members cannot be left behind in distressful conditions, unattended to and uncared for. With the sudden departure of a breadwinner, we should be alive to the fact that most of the Indian families lose the very source of their sustenance. It is not at all difficult for us to imagine that inspite of rapid strides of progress, the country has been making in all Sectors, Still there are several lakhs of families having a single breadwinner and on an average of 4 or 5 hungry persons depend on him for their sustenance and survival. In such a scenario, if that breadwinner vanish suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. His savings would be hardly enough to see them through the next couple of months, at best. During

the best days of a man, he might have contributed meaningfully, given the fact that whatever marginally that would make a difference to the State Services and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them.

5. 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. 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. 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, say, three years or at best five years. If the surviving members of the civil servant who died with the hardships of life, can get along and carry on their show for considerable length of time after the departure of the breadwinner by far in a reasonable manner, interference can be drawn from that the family of the deceased civil servant is able to feed 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, but, it has the social resources to carry on with the show in his absence as well.

6. In these set of circumstances, the State Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

7. When we keep these factors in mind and also in view of the fact that making appointments on compassionate grounds is not one of the identified/marked sources of recruitment to civil service--rather it is an exception to the normal constitutional norm of allowing all people to contest and compete--appointments on compassionate grounds cannot be made after long years have gone by, from the date of the death of the civil servant"

10. In view of the elaborate discussion made above, now, at this length of time it may not be appropriate to consider the claim of the writ petitioner for compassionate appointment and accordingly the writ petition stands dismissed. No costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

cgi/svn

To

1. The Director of School Educational
College Road, Chennai - 6

2. District Educational Officer,
(South Chennai) Egmore,
Chennai - 600 008.

+1cc to Mr.A. Chandrasekar, Advocate Sr. 51182
+1cc to the Government Pleader Sr. 51363

W.P.No.11640 of 2015

NM(CO)
VR(17/8/2017)