

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.08.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.11770 of 2015

A.R.Gopi

..Petitioner

Versus

1. The State of Tamil Nadu,  
Rep. By the Secretary to Government,  
School Education Department,  
Fort St. George,  
Chennai 600 009.
2. The Director of School Education,  
College Road, Nungambakkam,  
Chennai 600 006.
3. The District Educational Officer,  
Thirupathur,  
Vellore District.
4. The Head Master,  
Government Higher Secondary School,  
Patchur, Thirupathur Taluk,  
Vellore District.

..Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus directing the respondents herein to provide appointment to the petitioner on compassionate grounds consequent on the death of the petitioner's father Late.C.Rangasamy while in Harness on 03.03.1996 commensurate with the petitioner's educational qualification pursuant to the communication dated 29.08.2014 of the 3<sup>rd</sup> respondent within a time frame that may be fixed by this Hon'ble Court.

For Petitioner : M/s.A.R.Suresh

For Respondents : Mr.K.Dhananjayan,  
Special Government Pleader

## O R D E R

The relief sought for in this writ petition is for compassionate ground appointment of the writ petitioner.

2. The learned counsel appearing for the writ petitioner contended that the father of the writ petitioner Mr.C.Rangasamy was working as a Secondary grade teacher in the School Education Department and passed away on 03.03.1996, while he was in service. The family was in indigent circumstances and based on that, the mother of the writ petitioner submitted an application for compassionate appointment on 10.01.1999. The application was forwarded and the same was returned on the ground that the mother of the writ petitioner was not having requisite educational qualification so as to consider her case for compassionate appointment. Meanwhile, the writ petitioner has completed his BA degree during April 2001 and thereafter, submitted an application seeking compassionate appointment on 05.09.2002. On 23.02.2012, the second respondent sent a reply stating that no application for compassionate appointment is pending in the office of the 2<sup>nd</sup> respondent and once again, an application was submitted subsequently. However, no reply has been given on the representations made by the writ petitioner. Thus, the present writ petition is moved for a direction to appoint the petitioner on compassionate ground.

3. The compassionate appointment is a scheme and it is not a regular recruitment process and the terms and conditions prescribed for the compassionate appointment scheme is to be followed strictly and scrupulously by the competent authorities. The very purpose of providing the scheme of compassionate appointment by the Government is to mitigate the indigent circumstances arising on account of the sudden demise of the Government employee while in service. Thus, the scope of the scheme is to be considered while providing appointment on compassionate ground. Appointment on compassionate ground is to be considered within a reasonable period of 3 years or at least within 5 years, but certainly not thereafter, because the indigent circumstances as claimed by the legal heirs of the deceased employee will vanish after a lapse of many years. When the family is able to survive for a decade or more, even after the death of the deceased employee, then the indigent circumstances vanishes and consideration thereafter for compassionate appointment will certainly amount to deprivation of opportunity equally to all citizens of this Great Nation for public employment.

4. All appointment to the public employment is to be made by providing equal opportunity to all the citizens. The compassionate appointment scheme is to be provided only on

exceptional circumstances and it can never be utilised as a regular recruitment process, so as to deprive the right of other citizen to compete in the regular recruitment process for public employment. The scope of the scheme if exceeds will certainly deprive the opportunity of the youths seeking for participating in open competitive exams. This Court is of the firm view that the scope of the scheme itself is limited for a specific purpose of providing employment to the employees who are dying in service.

5. In this regard, this Court has considered the principles laid down and passed the following orders :

[a] 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.

[b] 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 4 or 5 hungry persons depend on him for their sustenance and survival. In such a scenario, if that breadwinner vanishes suddenly, it is not at all difficult for us

to visualise the harrowing plight to which the family would be reduced to overnight. The savings made by the public servant would be hardly enough to see them through the next six 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 States 'Service and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them, by those servants including the deceased employee'.

[c] 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 dependents 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 dependents 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 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, 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, and it has the necessary social resources to carry on with the show in his absence as well.

[d] 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.

[e] 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.

[f] It may be a different matter if the employee concerned died in service while trying to protect the property of the Court/State Government as the case may be and while trying to save it from any accidental hazards such as fire, flooding, etc., or while trying to save the record or property of the Court/Government from the hands of miscreants who are trying to destroy the same, as those cases, require greater amount of compassion to be shown as the individual concerned has made the highest sacrifice of his own life, for the cause of the State. In such cases, perhaps a longer duration of even ten or fifteen years can be considered as reasonable. Those, who lay down their lives while trying to save/protect the interest of the State Government/Court, stand on a lofty pedestal in comparison to those who met with either natural or self inflicted unnatural death. In no case, the time limit prescribed for entertaining the claims for compassionate appointment should be kept open like in the instant case for more than two 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.

6. In the case on hand, the father of the writ petitioner died on 03.03.1996 and the 1<sup>st</sup> application was made on 10.01.1999 by the wife of the deceased employee and thereafter, the writ petitioner submitted an application seeking compassionate appointment in the year 2012. Thus, no consideration on the application seeking compassionate appointment requires to be shown as far as the writ petitioner is concerned. Accordingly, the writ petition is devoid on merits and stands dismissed. No Costs.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rka/rpl

To

1. The Secretary to Government of Tamil Nadu,  
School Education Department,  
Fort St. George, Chennai 600 009.
2. The Director of School Education,  
College Road, Nungambakkam,  
Chennai 600 006.
3. The District Educational Officer,  
Thirupathur,  
Vellore District.
4. The Head Master,  
Government Higher Secondary School,  
Patchur, Thirupathur Taluk,  
Vellore District.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.57378  
+1cc to the Government Pleader, S.R.No.57974

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KGK(CO)  
GN(07/09/2017)