

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.13160 of 2015

D.Thirumavalavan

.. Petitioner

Vs

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The District Educational Officer,
Office of the District Education,
Thiruvarur,
Thiruvarur District.

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the order in Na.Ka.No.7146/A1/13, dated 30.12.2014 of the the second respondent and quash the same and consequently direct the first respondent to offer employment to the petitioner on compassionate grounds.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents: Mr.R.S.Selvam
Government Advocate

सत्यमेव जयते
O R D E R

The order of rejection issued by the second respondent in proceedings dated 30.12.2014 in relation to the claim of the writ petitioner seeking compassionate appointment is under challenge in this writ petition.

2. Learned counsel appearing for the writ petitioner submitted that the father of the writ petitioner was working as Headmaster in a Primary School, Annakudi, Kottur Panchayat Union, Thiruvarur and passed away on 16.02.2001 while he was in service. Soon after the demise of the deceased employee an application seeking compassionate appointment was filed by the writ petitioner on 24.08.2001 itself. However, the application

was rejected initially by the respondent and the writ petitioner filed W.P.No.11802 of 2013 and this Honourable Court passed an order on 15.09.2014, directing the second respondent to consider the case of the writ petitioner for appointment on compassionate grounds and after verifying whether the petitioner's family is in indigent circumstance and pass appropriate orders within a period of twelve weeks, from the date of receipt of a copy of the said order.

3. This Court has directed the respondent to verify the indigent circumstance prevailing in the family of the writ petitioner. Pursuant to the orders passed by this Court cited supra, the order impugned in this writ petition was issued by the respondent in proceedings dated 30.12.2014 and a perusal of the impugned order it is stated that the wife of the deceased employee was not possessing the required educational qualifications and the learned counsel for the petitioner submits that she had also passed away.

4. The first son of the deceased employee completed Diploma in Engineering and got married. The second daughter was also married and living separately. The third son has completed his M.S.C. Degree and got married. The father of the deceased employee is aged about 86 years and his mother is aged about 79 years. Thus, all the children are married and they are living separately. This apart, the respondents have verified the indigent circumstances prevailing in the family of the writ petitioner and made a finding that the writ petitioner is also employed as LIC agent and earning sufficiently. Accordingly, a findings was made that the family is not in indigent circumstance and there is no eligibile person in the family for the purpose of extending the benefits of the scheme of compassionate appointment.

5. Compassionate appointment is an exception and can never be construed as regular recruitment process. The scheme of compassionate appointment introduced in order to mitigate the indigent circumstances arising on account of the sudden demise of a Government employee, when he was in service. Thus, the scheme is an exception and the same is to be implemented in accordance with the context therein. The authorities competent have to verify the fact that whether the family is in indigent circumstances are not. Lapse of time in this regard will be presumed that the circumstances prevailing at the time of death of the deceased employee vanishes. Lapse of time in this regard to be construed that as if the indigent circumstance alleged by the legal heirs of the deceased employee vanished. Thus, all compassionate appointments to be considered by the competent authorities, within a reasonable period of time to say three years or five years. Belated appointment on compassionate

ground cannot be extended in view of the fact that the object of the scheme itself is to mitigate the indigent circumstances. In this view of the matter, no appointment on compassionate grounds can be provided after a lapse of many years. This Court has considered the legal principles laid down in this regard by the Courts and the same are extracted hereunder:

"1. 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.

2. 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'.

3. 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.

4. 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.

5. 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.

6. 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 deceased employee passed away on 16.02.2001 and the application was made on 24.08.2001. Thus, the same was not considered and the writ petitioner earlier filed a writ petition in W.P.No.11802 of 2013 and pursuant to the directions of this Court, the respondent conducted an enquiry in respect of the indigent circumstances prevailing in the family of the writ petitioner, the respondent also found that the family is not in indigent circumstances. This apart, now after a lapse of more than 16 years from the date of death of the deceased employee no appointment on compassionate ground can be provided to the family of the writ petitioner. The deceased employee passed away in the year 2001 and the first writ petition was filed in the year 2013 after a lapse of 12 years. Thus, the writ petition is liable to be rejected on the ground of laches.

7. The scheme must be implemented within its terms and conditions and any violation will affect the rights of the other citizens to participate in the open competitive process. This being the scope of the scheme of compassionate appointment the same cannot be further extended or stretched off so as to provide employment after a lapse of many years. This being the view taken by this Court no further adjudication in this writ petition needs to be undertaken.

8. Accordingly, the Writ petition stands dismissed. However, there will be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To

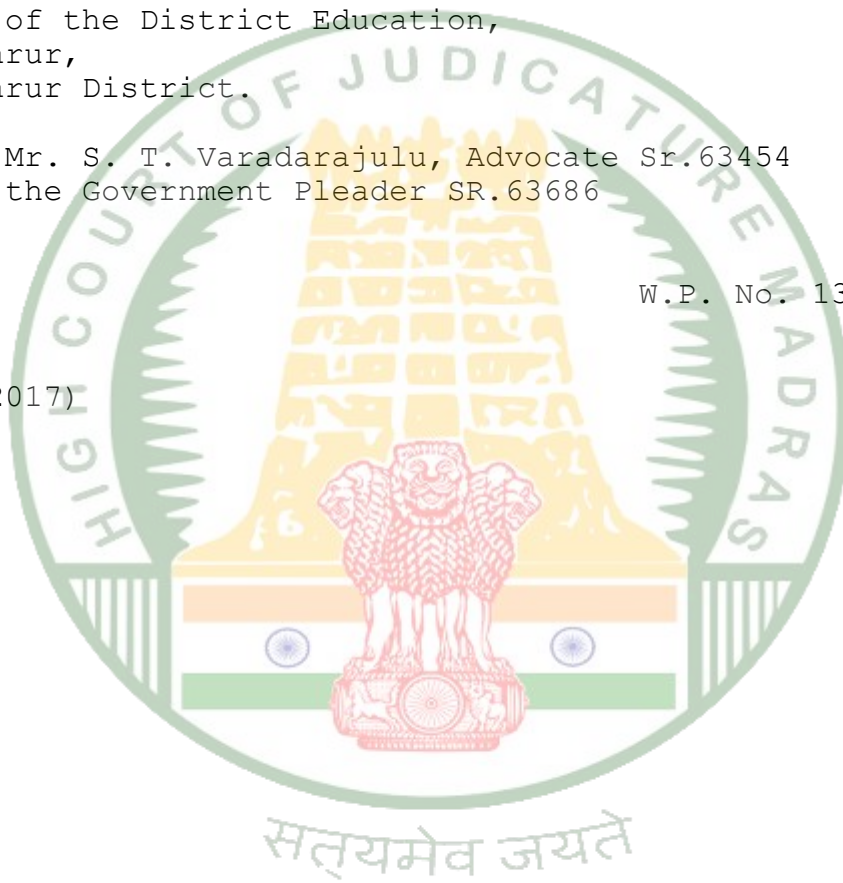
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+ 1 cc to Mr. S. T. Varadarajulu, Advocate Sr.63454
+ 1 cc to the Government Pleader SR.63686

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EU(04/10/2017)



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