

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. No.22866 of 2017

and

W.M.P.No.24043 to 24045 of 2017

G. Punitha

.. Petitioner

vs.

1. The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-600 009.
2. The District Collector,
Nagapattinam,
Nagapattinam District.
3. The Tahsildar,
Vedaranyam,
Vedaranyam Taluk,
Nagapattinam District

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in relates to the rejection order of the second respondent Ni.Mu.No.21557/2014/A3, dated 27.01.2016 and subsequent order in Na.Ka.No.26131/2016/A3 dated 04.01.2017 and quash the same and consequently direct the second respondent to appoint the petitioner as a Village Administrative Officer at Vedaranyam Taluk based on compassionate ground.

For Petitioner : Mr. V. Kasinatha Bharathi

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

O R D E R

The order of rejection dated 27.01.2016 and 04.01.2017 are under challenge in this writ petition.

2. The father of the writ petitioner was employed as Village Administrative Officer and died on 24.01.2014, while he was in service.

3. The writ petitioner submitted an application seeking appointment on compassionate grounds during April 2014. The wife of the deceased employee gave no objection for employment of the writ petitioner, the younger sister has also given no objection for providing employment to the writ petitioner. The second respondent/District Collector in proceedings dated 27.01.2016, rejected the claim of the writ petitioner for compassionate appointment on the ground that the sister of the writ petitioner was already employed as a Teacher in Government school and therefore, the case of the writ petitioner can not be considered.

4. The learned counsel appearing for the writ petitioner states that the younger sister of the writ petitioner, who is working as a Teacher in Government school got married and living separately and she is not maintaining the family.

5. This Court wishes to draw an inference on the submission made by the writ petitioner, in view of the fact that, the writ petitioner is an elder daughter of the deceased employee and she got married prior to the marriage of the younger sister. Thus, the elder sister also got married and living with her husband. In these circumstances, the marriage solemnised to the younger sister after the marriage of the writ petitioner may not have much relevance in relation to the indigent circumstances stated in the application seeking compassionate appointment.

6. At the outset, this Court has to consider, whether the family of the writ petitioner is in indigent circumstances. The deceased employee died on 24.01.2014, after the death of the deceased employee, the terminal and retirement benefits were settled to his wife and the wife is receiving the family pension as on today and continue to get and receive the same. The writ petitioner, who is elder daughter, has got married and living along with her husband.

7. The learned counsel appearing for the writ petitioner admits that the husband of the writ petitioner is also employed in a private sector. Thus, the husband of the writ

petitioner is an earning member. The second daughter working is as a Teacher in Government school and now got married and living separately. And the over all view and situations prevailing in the family of the writ petitioner is clear that there is no possibility of indigent circumstances, exists even on today, on account of the demise of the Government employee. It is relevant for providing compassionate appointment that indigent circumstances has to subsist in the family of the deceased employee and appointment on compassionate ground, being the scheme and an exception, cannot be misused or abused either by the competent authority or by legal heirs of the deceased Government employee.

8. Compassionate Appointment is a scheme and a concession can never be construed as a regular process of recruitment for appointment to the public post. It has to be undertaken only through constitutional scheme by following recruitment rules in force. Equal opportunity of the employment to all the citizens of this great Nation is a constitutional mandate. Thus, the scope of the compassionate appointment is absolutely limited and the same has to be provided only on need basis and in the event of ascertaining the family of the deceased employee is in indigent circumstances.

9. In this regard, this Court has considered the legal principles laid down in various judgments and those principles 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."

10. In this view of the matter, the reasons stated in the order impugned is certainly candid and convincing on ascertaining the factual circumstances of the family of the writ petitioner. This Court is of the opinion that there is no possibility of continuance of indigent circumstances of the writ petitioner and her family, accordingly, the rejection order passed by the respondent is very much in order and there is no infirmity.

11. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rp1

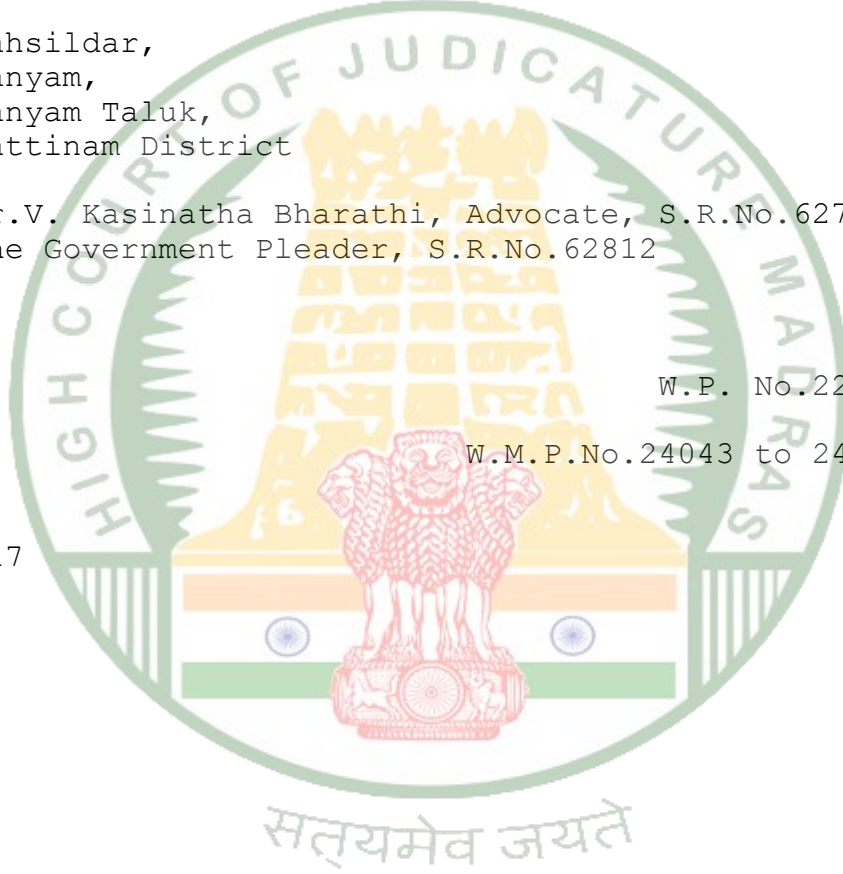
To

1. The Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-600 009.
2. The District Collector,
Nagapattinam,
Nagapattinam District.
3. The Tahsildar,
Vedaranyam,
Vedaranyam Taluk,
Nagapattinam District

+1cc to Mr.V. Kasinatha Bharathi, Advocate, S.R.No.62789
+1cc to the Government Pleader, S.R.No.62812

W.P. No.22866 of 2017
and
W.M.P.No.24043 to 24045 of 2017

RJ(CO)
CS/22/09/17



WEB COPY