

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2017

Coram

The Hon'ble Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.16132 of 2016

S.Lakshmi

...Petitioner

Vs.

1. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai - 600 003.

2. The Zonal Officer
Zonal Office - 9
Corporation of Chennai
No.1, Lake Area, 4th Cross Street
Nungambakkam, Chennai - 600 034.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the order dated 19.02.2015 made in Ma.A.9.Na.Ka.No.A4/000544/2015 on the file of the Zonal Officer, Zonal Office - 9, Corporation of Chennai, No.1, Lake Area, 4th Cross Street, Nungambakkam, Chennai - 600 034, the second respondent herein and quash the same and consequently direct the second respondent to give a suitable employment to petitioners daughter, Kuppammal, on compassionate grounds.

For Petitioner : Mr.R.Sugumaran

For Respondents : Mr.G.Anantha Rangan

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O R D E R

The order of rejection dated 19.02.2015 in relation to the claim of compassionate appointment is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner made a submission that the husband of the writ petitioner Late Somasundaram working as sweeper in Corporation of Chennai, and died on 05.02.2005, while he was in service. The learned

counsel further states that the writ petitioner is an illiterate person and therefore, she was not aware of the rules and regulations, in relation to the compassionate appointment. However an application was made by the writ petitioner, seeking compassionate appointment on 30.04.2008. The application was considered and rejected by the respondent only on 19.02.2015. The learned counsel states that the writ petitioner has waited for the order to be passed and therefore the delay is not at the instance of the writ petitioner and the respondents are liable for the delay in considering application after seven years. However, the fact remains that the deceased employee died on 05.02.2005 and the application was submitted on 30.04.2008, after a lapse of three years and the final order passed in 19.02.2015 after a lapse of seven years. The writ petitioner also after submitting application for compassionate appointment on 30.04.2008, had not approached this Court by way of writ petition for about eight years and therefore there is a laches on the part of the writ petitioner even in approaching this Court for compassionate appointment.

3. The writ petitioner can very well approach this Court within a period of one or two years from the date of submission of application for compassionate appointment. But she waited for about twelve years and thereafter filed the writ petition after receiving the rejection letter from the respondents. Thus, the presumption is that the writ petitioner is able to run her family for more than 12 years and therefore the indigent circumstances arose on account of the sudden demise of her husband got vanished in the eye of law.

4. The concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

5. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner. This category of appointment cannot be claimed as a matter of right after lapse of the period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.

6. It is pertinent to note the fact that in a liberalized

world as of today, there are plenty of avenues of employment available to the general public. Most of the people are not entirely dependent on the income of a single member of the family. Keeping this new social structure in mind, it would be seemingly right for the Courts to ensure that there is no abuse of the scheme of compassionate appointment either by the employer or by the applicant/claimant.

7. The million dollar question is 'Whether offering 'appointment' on compassionate ground (i.e., sympathy) is the only option /solution to mitigate 'hardship and distress of the family of an employee dying in-harness? Answer is an emphatic 'No'. Firstly, the Rules, as such, contain no provision to ensure that the-dependent who gets appointment shall continue to maintain other dependents.

8. A 'welfare state' like ours is free to initiate effective welfare scheme/s- and no one will be in a position to oppose. It is well settled that sympathy cannot be allowed to override statutory or Constitutional provisions, particularly when it is quality of the question of welfare of the entire society and /or question of Governance. State like ours is free to wed to 'solemn object' to serve the society at large, purely according to the mandate under the Constitution of India. State cannot be allowed to look after 'welfare' of its own employees and their families alone.

9. In this view of the matter no further adjudication is required in this writ petition. Accordingly writ petition stands dismissed. However no order as to costs.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar

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To

1. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai - 600 003.

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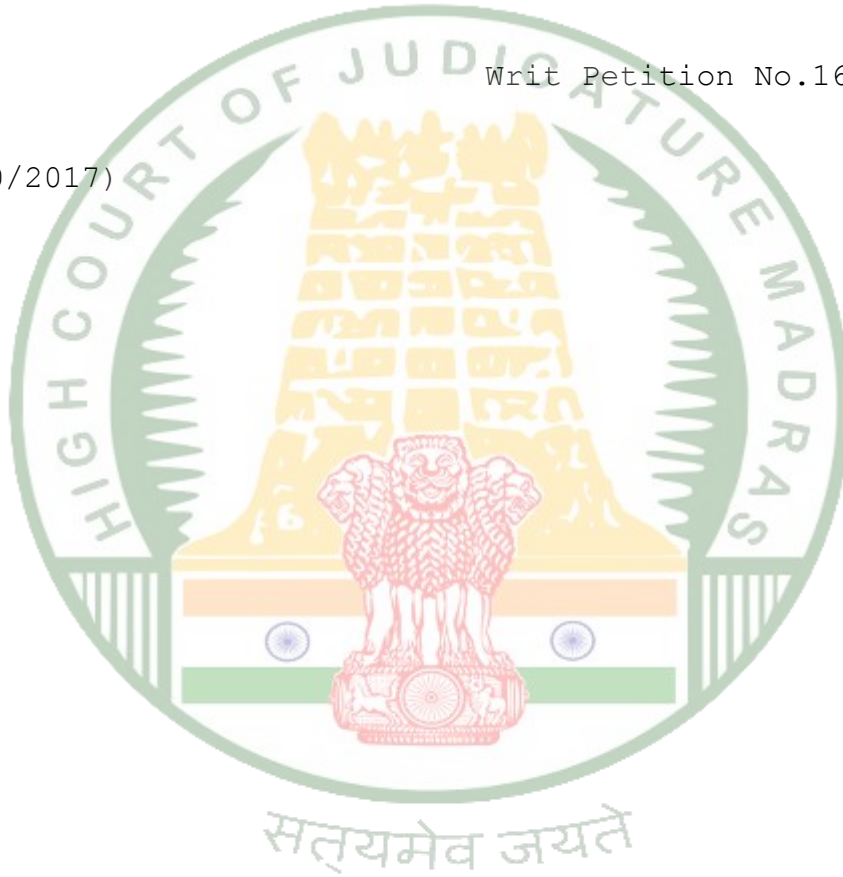
2. The Zonal Officer
Zonal Office - 9
Corporation of Chennai
No.1, Lake Area, 4th Cross Street
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+1 C.C. to M/S.R.Sugumaran Advocate SR.NO. 67866

+1 C.C. to M/S.G.Anantha Rangan Advocate SR.NO. 68120

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MN(CO)
ADD (12/10/2017)



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