

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1937 of 2015

G.Madhan Kumar

.. Petitioner

vs.

1. State of Tamil Nadu
Represented by its Secretary
Municipal Administration and Water
Supply Department, Chennai - 9.
 2. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
Head Office, No.31, Kamarajar Road,
Chepauk, Chennai - 600 005.
 3. The Secretary,
Tamil Nadu Water Supply and Drainage Board,
Head Office, No.31, Kamarajar Road,
Chepauk, Chennai - 600 005.
 4. Administrative Engineer,
Village Water Planning Division,
64, Thillaipuram 2nd Street,
Namakkal - 637 001.
- .. Respondents

The Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to direct the 2nd respondent to appoint this petitioner for Government service under compassionate ground.

For Petitioner : Mr.A.Saranraj

For Respondents : Mr.C.C.Rangarajan
Government Advocate for R1
M/s.S.Thamizharasi for RR2 to R4.

ORDER

The present writ petition is filed for a direction to direct the respondent to appoint the writ petitioner in any one of the posts in government service under compassionate

ground.

2. The learned counsel appearing for the writ petitioner contended that the father of the writ petitioner was working as an Office Assistant in the office of the Managing Director, Tamil Nadu Water Supply and Drainage Board and died on 01.08.2000, while in service.

3. Since the father of the writ petitioner was the sole bread winner of the family, after demise of his father, the family is in indigent circumstances and thereafter, the mother of the writ petitioner submitted a representation to the second respondent in person on 16.08.2001 seeking compassionate appointment. Subsequently, the representation was not vigilantly pursued by the mother of the writ petitioner. The writ petitioner submitted his representation only on 06.12.2007 to the second respondent. The said representation was rejected by the respondent in proceedings dated 28.01.2008 stating that the writ petitioner has not submitted his application seeking compassionate appointment within a period of the three years from the date of death of the deceased employee and therefore, the claim of the writ petitioner for compassionate appointment cannot be considered.

4. The said order of rejection has not been challenged by the writ petitioner till today. Even in the present writ petition, only a direction is sought for to appoint him on compassionate ground and the order of rejection issued on 28.01.2008 has not been challenged by the writ petitioner at any point of time. However, this court has to consider the legal principles in respect of compassionate appointment scheme.

5. Compassionate appointment cannot be claimed as a matter of right and it is a scheme extended by the employer to the employees by way of concession. Thus, the appointment on compassionate grounds has to be undertaken, strictly on the basis of the terms and conditions enumerated in the scheme. Compassionate appointment is not a regular recruitment process and all such cases of compassionate appointment has to be considered within a reasonable period, to say, within three years or five years, but not later than that. The scheme itself is only to mitigate the penury caused to the family on account of the sudden demise of the employee. However, the appointment on compassionate ground could not be made after a lapse of many years. The scope of compassionate appointment was considered by this Court in its earlier judgment, wherein it has been held as under:

"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."

6. In the light of the decisions and legal principles enunciated in regard to the issue of compassionate appointment, no further consideration is required to be shown to the petitioner in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

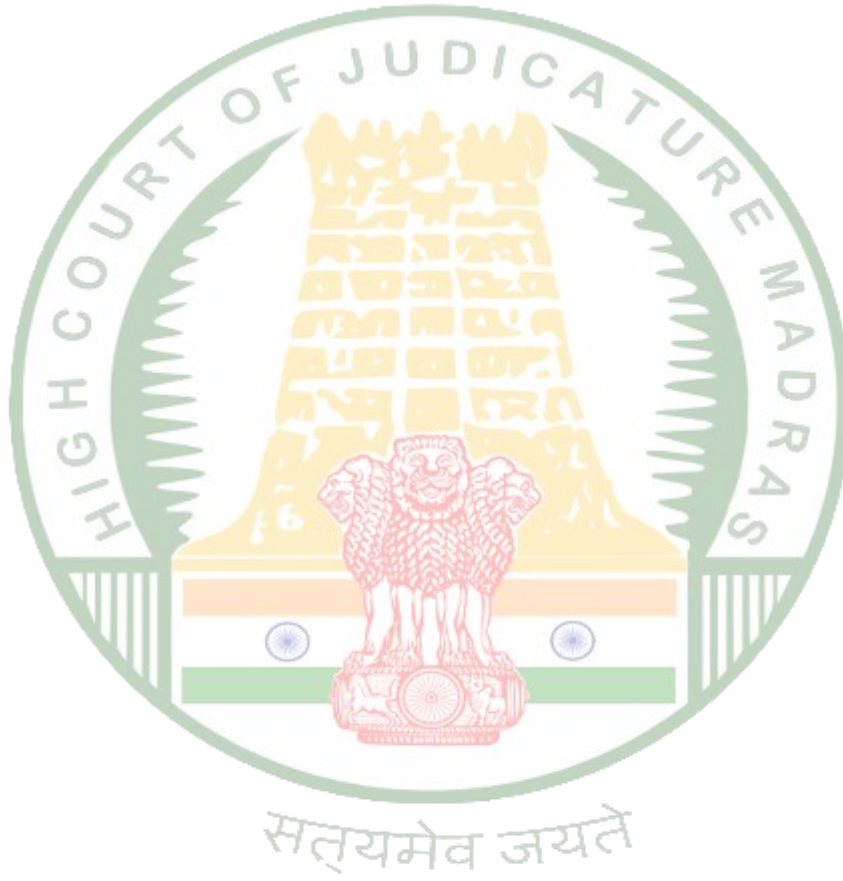
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+1cc to The Government Pleader SR.No.55732

+1cc to M/s.S.Thamiizharasi, Advocate SR.No.551

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SDR 31.08.2017



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