

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2017

CORAM

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

W.P. No.17888 of 2017

G.V.Sangeetha

... Petitioner

.Vs.

1. The Director

O/o.Director of Public Health
and Preventive Medicine,
359, Anna Salai, DMS Complex,
Teynampet, Chennai 600 006.

2. The Deputy Director of Health Services,
O/o.Deputy Director of Health Services,
Beach Road, Cuddalore 607 001.

...Respondents

Prayer : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus calling for the records and quash the order passed by the 2nd respondent in his proceedings Na.Ka.No.7886/A3/2016 dated 23.01.2017 and consequently direct the respondents to provide petitioner a job on compassionate grounds commensurate with her qualification.

For Petitioner : Mr.R.Gururaj
For Respondents : Mr.S.Guna Sekaran
Addl. Govt. Pleader

O R D E R

The rejection of compassionate appointment is under challenge in this writ petition. The writ petitioner is the daughter of one Late. Smt. R.Vasanth, who was working as village health nurse, died while in service on 27.11.2006. The deceased employee left behind her husband Mr.Venkatrayalu, two daughters and a son as legal heirs.

2.Though the deceased employee died on 27.11.2006, application for compassionate appointment was moved by the son Thulasi Govindarajalu on 21.10.2009.

3. During the pendency of the application, the son Thulasi Govindarajalu also expired on 03.11.2013. Thereafter, one of the daughters Smt. Sangeetha filed an application seeking compassionate appointment on 27.11.2013.

4. The Learned Counsel appearing for the writ petitioner contended that the marriage of the writ petitioner has solemnized subsequently after the death of her mother. Therefore, she is entitled to avail the benefit extended by the Government in

G.O.Ms.No.78 of 2017 Labour and Employment (Q-1) Department dated 21.04.2017.

5. On the facts of this case, it is to be considered, whether the writ petitioner has got an accrued right of seeking compassionate appointment after a lapse of more than ten years from the date of death of the Government employee. Yet another point to be discussed is that when the family is able to maintain itself in the indigent circumstances, now after a lapse of ten years, whether the right of compassionate appointment continue to exist for the writ petitioner or not. These are the issues considered by this court in W.P.No.18044 of 2017 dated 17.07.2017 as follows:

"4. This Court considered the arguments advanced by the learned counsel for the writ petitioner that, 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 to 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.

5. 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. If, unfortunately, any such employee died 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 in spite 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 vanished 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.

6. 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, 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 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.

7. 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.

8. 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 view of these observations, and at this length of time, the claim of the writ petitioner for compassionate appointment does not arise at all. The compassionate appointment can never be made as a regular recruitment process which has to be undertaken only through constitutional schemes by providing equal opportunity to all the citizens.

7. Any public appointment and its process has to be undertaken only through constitutional schemes and scheme of compassionate appointment is only an exception. While exercising this scheme of exception, certain conditions are to be fulfilled by the person seeking benefit of the compassionate appointment scheme. One of the primary conditions is that the family has to be in indigent circumstances and long survival of the family in the absence of the deceased Government servant is to be presumed that the indigent circumstances does not continue and it vanishes, in the eye of law. Even if it continues, the same cannot be construed as on account of the death of the Government employee.

8. In this view of the matter, no further consideration is required. Accordingly, the writ petition stands dismissed. However there is no order as to costs.

Sd/-
Asst. Registrar (J)

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Sub Asst. Registrar

smn/kas

To.

1. The Director
O/o. Directorate of Public Health
and Preventive Medicine,
359, Anna Salai, DMS Complex,
Teynampet, Chennai 600 006.

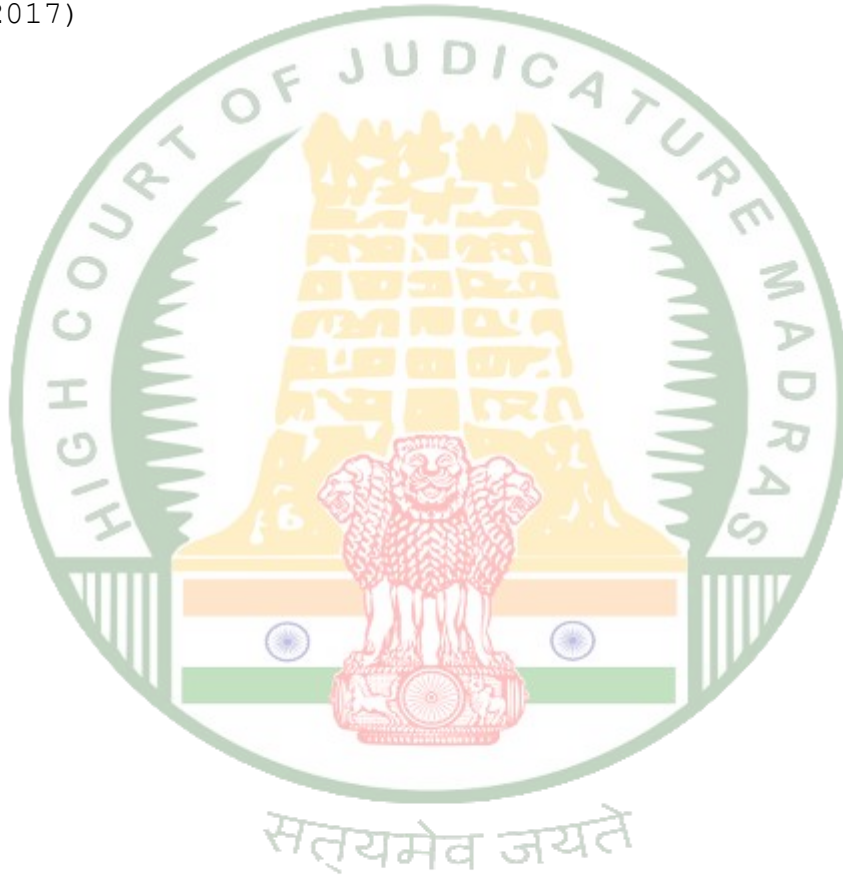
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2. The Deputy Director of Health Services,
O/o.Deputy Director of Health Services,
Beach Road, Cuddalore 607 001.

+1cc to Mr.R.Gururaj, Advocate Sr. 49965
+1cc to the Government Pleader, Sr. 50151

W.P. No.17888 of 2017

SVI (CO)
VR(07/08/2017)



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