

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20-07-2017

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.18498 of 2017

R.Thilaga

....

Petitioner

Versus

1.The Additional Director (Administration)
Medical and Rural Health Services,
DMS Campus, Thenampet,
Chennai-600 006.

2.The District Leprosy Officer,
Dindugal District.

....

Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari directing the respondents herein to consider the petitioner's application dated 19.02.1995 for appointment on compassionate grounds by taking into consideration the fact that the Government has issued G.O.No.96, dated 18.06.2012 and consequential G.O.No.96, dated 18.06.2012 and consequential G.O.No.78, dated 21.04.2017, providing for compassionate appointment to married daughters also who were married after 29.11.2001 and accordingly, appoint the petitioner on compassionate grounds to any of the posts suitable to her educational qualification.

For Petitioner : Mr.P.Nethaji

For Respondents : Mr.K.Dhananjeyan,
Special Government Pleader.

ORDER

The relief sought for in this writ petition is seeking compassionate appointment to the writ petitioner.

2. The father of the writ petitioner was working as Leprosy Inspector in the District Leprosy Office, Dharmapuri District and died in service on 18.4.1992. Thereafter, the writ petitioner submitted an application, seeking compassionate appointment in the year 1993.

3. Pursuant to the application, the first respondent issued a memo dated 19.10.1994, directed the second respondent to receive the Certificates from the writ petitioner and forward the same to the first respondent. Accordingly, the writ petitioner submitted his details in the format to the second respondent on 19.2.1995.

4. Subsequently, in letter dated 26.10.1995, the first

respondent again directed the second respondent to forward the original Certificates submitted by the writ petitioner. Accordingly, the petitioner also furnished the original documents, which was forwarded by the second respondent to the first respondent on 2.9.1996.

5. The learned counsel for the respondents submitted that the father of the writ petitioner remained unauthorisedly absent and the Government issued G.O.No.1129, dated 22.12.2005, to regularise the period of unauthorised absence. The period was regularised as ELWA, without Medical Certificate, by relaxing FR 18(2) and FR 18(3). Consequently, a revised order was also issued in G.O.(D) No.908, Health and Family Welfare Department, dated 31.7.2007. Thus, the writ petitioner claims compassionate appointment.

6. The learned Special Government Pleader, appearing for the respondents, submitted that though the period of unauthorised absent was regularised, the writ petitioner is not eligible for compassionate appointment since the father of the writ petitioner passed away on 18.4.1992 and now after a lapse of 25 years, appointment on compassionate ground, cannot be provided with.

7. This Court, time and again, reiterated that compassionate appointment is a scheme and cannot be used as a regular recruitment process. Equal opportunity in employment is a constitutional directive under Part-IV of the Constitution of India. Public employment to be provided to all the citizens equally and any discrimination in this regard is directly in violation of Articles 14 and 16 of the Constitution of India.

8. Compassionate appointment can never and ever be adopted for the purpose of marking as regular recruitment. It is only a scheme which is to be used on terms and conditions only on exceptional circumstances, to say in an indigent circumstances of a family of a Government employee who died in service.

9. Such being the scope of the compassionate appointment scheme, providing such an appointment, after a lapse of 25 years from the date of death of the Government employee, will certainly against the very spirit of the scheme. When the family is able to survive for about 25 years, after the death of the deceased employee, providing

appointment, at this point of time, will be not only discriminatory, but amount to provide appointment contrary to the scheme itself.

10. In this regard, it is useful to cite the following judgment of this Court in the case of **T.Jothimalar vs. Principal District Judge, Cuddalore District, Cuddalore {WP No.1207 of 2015 decided on 18.1.2017}**, the relevant paragraphs-3 to 7 are extracted hereunder:-

"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 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'.

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 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.

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."

11. In view of the principles laid down in the above judgment, this Court is of the firm opinion that after this length of time, the petitioner cannot be provided with any appointment on compassionate ground. Accordingly, the writ petition deserves no further consideration and it stands dismissed. However, there shall be no order as to costs.

20-07-2017

Speaking Order/Non-Speaking Order.

Index: Yes/No

Internet: Yes/No
sk/Svn

To

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2.The District Leprosy Officer,
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S.M.SUBRAMANIAM.,J

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