

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2017

CORAM

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

W.P.No.34238 of 2012

and

M.P.No.1 of 2012

B.Chitra

..

Petitioner

vs

The Chennai Port Trust,
Rep by its Secretary,
Rajaji Salai,
Chennai - 600001.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records leading to pass the impugned letter No.SCTS5/2719/2011/GA dated 16.06.2012 passed by the respondent and quash the same consequently direct the respondent to consider the petitioner's name for compassionate appointment.

For Petitioner : Mr.C.Jagadish

For Respondent : Mr.P.Saravanan

ORDER

The relief sought for in this Writ Petition to call for the records in respect of the order of rejection passed by the respondent in Proceedings dated 16.06.2012, and to quash the same and provide appointment on compassionate grounds to the writ petitioner.

2. The learned counsel appearing for the writ petitioner has submitted that the husband of the writ petitioner, late Sri.A.J.Babu Dhanraj was employed as Lascar Grade-I, in the respondent establishment and passed away on 09.06.2004, while he was in service. The writ petitioner submitted an application, seeking appointment on compassionate grounds on 10.12.2004 itself. However, the same was kept pending without any information to the petitioner for about 8 years and after a lapse of 8 years, the respondents rejected the claim of the writ petitioner, vide proceedings dated 16.06.2012 (impugned herein) stating that, there is no possibility of considering the case of the writ petitioner for appointment on

compassionate grounds. The learned counsel for the petitioner further states that the family of the writ petitioner, even now, is suffering from poverty and under penurious circumstances and the writ petitioner is now aged about 37 years and unemployed. The petitioner is leading her life in support of her younger brother, who is working under the private organization.

3. The learned counsel appearing for the respondent has submitted that, in respect of the scheme of appointment on compassionate grounds, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, in his Letter No.14014/19/2002-Estt(D) dated 5th May, 2003, issued orders as follows:-

"The maximum time a person's name can be kept under consideration for offering compassionate Appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again."

4. The scheme of compassionate appointment, being an exception, has to be implemented, as per its terms and conditions and the scope of the scheme, cannot be enlarged so as to provide appointment beyond the reasonable period of time from the date of demise of the employee. The Scheme of compassionate appointment, being a special one, and issued with an object to mitigate the circumstances arising on account of sudden death of an employee. The benefit of the Scheme, now, cannot be extended after a lapse of about thirteen years from the date of death of the deceased employee. The learned counsel for the writ petitioner relied upon the judgment of this Court passed in W.P.No.9780 of 2011, wherein, the learned Single Judge considering the peculiar facts and circumstances of the case, granted relief. However, the legal principles in relation to the scheme of compassionate appointment was reviewed by the Hon'ble Division of this Court, in the case of Inspector General of Prisons Vs. Marimuthu reported in (2016 5 CTC 125). Thus, this Court has to follow the legal principle settled by the Division Bench of this Court as well as the Hon'ble Supreme Court of India. In this view of the matter, this Court is not inclined to consider the case of the writ petitioner for granting appointment on compassionate grounds.

5. This apart, this Court is of the opinion that consideration for appointment on compassionate ground is to be construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore, does not create any vested right in favour of the claimant. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession, and it cannot be claimed as a matter of right, by the claimant to be enforced through a writ proceeding. A compassionate appointment is justified, when it is granted to provide immediate succor to the deceased employee. Mere death of a Government employee in harness, does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee, and only if the Authority is satisfied that without providing employment, the family will not be able to meet the crisis, then, in that case, a job is to be offered to the eligible member of the family of the deceased employee.

6. Further, 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.

7. In view of the discussions made above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court of India and by the Hon'ble Division Bench, this Court is of the opinion that the scope of compassionate appointment is to be restricted to the terms and conditions of scheme itself and the same cannot be stretched by the Courts, so as to provide appointment on compassionate ground. This apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court of India in respect of the scheme, the grounds raised in this writ petition deserve no further consideration.

8. In this view of the matter, this Court is not inclined to consider the prayer sought in this Writ Petition. At this juncture, the learned counsel has brought to the notice of this Court that, even in the impugned order, the respondent has stated that in lieu of compassionate appointment, compensation will be paid. It is left open to the writ petitioner to approach the respondents in this regard by submitting an application and if any such application is filed by the writ

petitioner, the respondent shall consider the same and pass orders on merits and in accordance with law.

9. In the result, this writ petition stands dismissed with the above observations. Consequently, the connected Miscellaneous Petition is also dismissed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

msrm/kak

To

The Secretary,
The Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

+ 1 cc to Mr.P.Saravanan Advocate,SR.79667

+ 1 cc to Mr.C.Jagadish Advocate,SR.79720

W.P.No.34238 of 2012

SV(CO)
NR 12/12/2017



WEB COPY