

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM

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

W.P.No.34395 of 2016

R.Elango

... Petitioner

Vs

1. The Government of Tamilnadu represented by the Principal Secretary to Government, Micro, Small and Medium Enterprises Department, (formerly Small Industries Department), Secretariat, Fort St.George, Chennai-600 009.
2. The Additional Chief Secretary/Industries Commissioner & Director of Industries & Commerce, SIDCO Corporate Office Building, 3rd Floor, Thiru-Vi-Ka Industrial Estate, Guindy, Chennai 600 032.
3. The Regional Joint Director of Industries and Commerce, SIDCO Corporate Office Building, 3rd Floor, Thiru-Vi-Ka Industrial Estate, Guindy, Chennai 600 032. ... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue an appropriate Order, Directions or Writ including a Writ of Certiorarified Mandamus or a Writ in the nature of Certiorarified Mandamus to call for the records relating to the impugned order of the Second Respondent issued in R.C.No.25606/EB1/2013 dated 12.12.2013 and quash the same and direct the Respondents to appoint the petitioner on compassionate grounds in any suitable job commensurate with petitioners qualification.

For Petitioner : Ms.J.Lakshmi Narayanan

For RR 1 to 3 : Mr.R.S.Selvam

Government Advocate (R1 -R3)

O R D E R

The relief sought for in this writ petition is for compassionate appointment the order of rejection dated 12.12.2013 issued by the second respondent is also under challenge in this writ petition.

2.The father of the writ petitioner worked as watch man in the office of the Regional Joint Director of Industries and Commerce and passed away on 22.06.1992, while he was in service, on account of Cancer. The learned counsel appearing for the writ petitioner contended that the writ petitioner has submitted an application, seeking compassionate appointment, on 24.07.1992. However, the same was kept pending for years together and on a perusal of the impugned order, it is stated that the application was initially rejected by the office of the respondent, in proceeding dated 21.08.2007, based on the Government letter dated 30.08.2010. Further, it is stated that the original file is not available, as the same has been destroyed, on account of the major fire accident that took place in the Government office at Chepauk on 15.01.2012. At that point of time, files relating to the father of the writ petitioner was destroyed, on account of a fire accident. Thus, the second rejection order was also issued in proceeding dated 12.12.2013, which is impugned in this writ petition. However, the reason stated in the impugned order is not convincing.

3.The Learned counsel appearing for the writ petitioner states that during the year 2007, the writ petitioner was called upon to submit his certificates and accordingly, he has approached the office of the respondents but no appointment order has been issued subsequently. Thus, the case of the writ petitioner that, his application was under continuous consideration in the office of the respondent and therefore, lapse of time should not be held against the writ petitioner. Further the writ petitioner was pursuing the matter vigorously with the office of the respondents and it is the respondent, who delayed the matter and for that the writ petitioner cannot be blamed.

4. However, this court has to consider the legal principles in the matter of compassionate appointment. Compassionate Appointment is the scheme and an exception. It can never be claimed as a regular recruitment process. The scheme of compassionate appointment was constituted to mitigate the indigent circumstances, arising on

account of sudden demise of the an Government employee while in service.

5. Thus the indigenous circumstances of a family of deceased Government employee is to be considered as factor by the respondents for appointing a person on compassionate grounds. Any appointment on compassionate grounds has to be considered and provided to anyone of the family members of a deceased Government employee within a reasonable period of time, to say three years or five years, and not thereafter. Compassionate appointment cannot be provided after a lapse of many years. The legal presumption in this regard is that when the family of deceased Government servant is able to survive for fairly a long period, the indigent circumstances vanishes and thereafter the question of considering the case of Compassionate Appointment does not arise at all. In the case on hand, the father of the writ petitioner died on 22.06.1992 and the application was submitted by the writ petitioner on 24.07.1992. Now, the writ petitioner, after a lapse of 25 years from the date of the death of the deceased employee, the concession of Compassionate Appointment cannot be provided to the writ petitioner.

6. Compassionate appointment is a concession and a scheme, more so an exception and never be a regular appointment. The appointment of public posts should be provided to all citizens of this great Nation by providing equal opportunity. Equal opportunity of public employment is a Constitutional mandate and such a valuable opportunity should be extended to all the young youths aspiring for public employment and preparing to participate in the regular recruitment process under the rules in force.

7. Thus, the scheme is to be restricted to provide assistance to the families which are all genuinely in need of the same and the same cannot be extended in a routine manner. The primary assumption is with regard to Penurious condition of the family and other related factors to be taken into consideration before providing appointment on Compassionate Grounds.

8. This court also earlier considered the scheme of compassionate appointment and held as follows:

"11. 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.

12. 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'.

13. 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.

14. 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.

15. 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.

16. It may be a different matter if the employee concerned died in service while trying to protect the property of the Court/State Government as the case may be and while trying to save it from any accidental hazards such as fire, flooding, etc., or while trying to save the record or property of the Court/Government from the hands of miscreants who are trying to destroy the same, as those cases, require greater amount of compassion to be shown as the individual concerned has made the highest sacrifice of his own life, for the cause of the State. In such cases, perhaps a longer duration of even ten or fifteen years can be considered as reasonable. Those, who lay down their lives while trying to save/protect the interest of the State Government/Court, stand on a lofty pedestal in comparison to those who met with either natural or self inflicted unnatural death. In no case, the time limit prescribed for entertaining the claims for compassionate appointment should be kept open like in the instant case for more than two decades. Any attempt to entertain any such claim, would convert the scheme of making compassionate appointments into a different form of hereditary employment. It would also tend to convert the scheme of compassionate

appointments into a source of recruitment altogether and both the aforementioned factors are not the pursuits, which should be allowed to be undertaken or encouraged by the State Government and its organs."

9. In view of the legal principles adopted in the earlier judgment and considering the facts and circumstances of the present case, no further consideration is required to be shown on the ground raised in this writ petition. Accordingly, the writ petition stands dismissed. However no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

tkp/sk

To

1. The Principal Secretary to Government,  
Micro, Small and Medium Enterprises Department,  
(formerly Small Industries Department),  
Secretariat, Fort St. George, Chennai-600 009.
2. The Additional Chief Secretary/Industries  
Commissioner & Director of Industries  
& Commerce, SIDCO Corporate Office Building,  
3rd Floor, Thiru-Vi-Ka Industrial Estate,  
Guindy, Chennai 600 032.
3. The Regional Joint Director of  
Industries and Commerce,  
SIDCO Corporate Office Building,  
3rd Floor, Thiru-Vi-Ka Industrial Estate,  
Guindy, Chennai 600 032.

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VGI (CO)

SS(20/9/2017)