

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.08.2017
CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. No. 35966 of 2016

G. Sudhakar.

..Petitioner

Vs.

1.The Chairman and Executive Director,
Perambalur Sugar Mills,
No.690, Anna Salai,
Chennai-36.

2.The Chief Executive Officer,
Perambalur Sugar Mills Ltd.,
36, Eraiyur,
Veppanthattai Taluk,
Perambalur District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus or any other writ directing the 2nd respondent to consider the representation of the petitioner dated 18.08.2016 and give any post on the grounds of compassionate appointment.

For Petitioner : Mr. K. Murugesan.
For Respondents : Mr. M. Perumal,
Government Advocate.

O R D E R

The relief sought for in this writ petition is for direction, to direct the second respondent to consider the representation submitted by the writ petitioner dated 18.08.2016.

2.The learned counsel appearing for the writ petitioner contended that the father of the writ petitioner was working as Sweeper in the office of the second respondent and died on 03.09.2001, while in service. The mother of the writ petitioner submitted a representation on 07.02.2002, seeking for appointment on compassionate ground.

3.On perusal of the representation, this court is able to see that the mother of the writ petitioner has stated that the employment may be provided to the family. However, the application was not in a prescribed format and thereafter, the

writ petitioner has made a representation to the second respondent on 06.08.2008 after a lapse of six years. Once again a representation was given on 23.11.2015 and on 18.08.2016 respectively, against which a direction is sought for in this writ petition.

4. Even to issue a direction to consider the representation in respect of compassionate appointment, this court has to consider that whether the writ petitioner has established any legal right for such consideration. In the absence of any semblance of right to claim the relief, no writ can be entertained under Article 226 of the Constitution of India, unless it is established that such right is a pre condition for entertaining the writ petition.

5. Let us now discuss the length of time and the indigent circumstances to be considered in this writ petition. Admittedly, the father of the writ petitioner expired on 03.09.2001, the mother of the writ petitioner submitted a representation on 07.02.2002 and the same was not pursued for about six years and after completing Industrial Training Institute course, the writ petitioner submitted a representation on 06.08.2008, thereafter again for about seven years, the writ petitioner has not pursued the matter. Further representation was given to the first respondent on 23.11.2015 and thereafter on 18.08.2016.

6. However, this court has to consider the legal principles in the matter of compassionate appointment. Compassionate Appointment is the scheme and it is 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 Government employee while in service.

7. 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 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 .

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

"1. 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.

2. 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'.

3. 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.

4. 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.

5. 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. 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.Thus, there is a total lapse of about 17 years from the date of death of the deceased employee, therefore, no further adjudication is required in this writ petition. Accordingly, writ petition stands dismissed. However, no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman and Executive Director,
Perambalur Sugar Mills,
No.690, Anna Salai,
Chennai-36.

2.The Chief Executive Officer,
Perambalur Sugar Mills Ltd.,
36, Eraiyur,
Veppanthattai Taluk,
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+1 cc to Government Pleader sr 61589

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