

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

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

W.P.No.41040 of 2016

D.Gopi

... Petitioner

Vs

1. The Joint Registrar of Co-operative Society
Thiruvannamalai Region
Thiruvannamalai District.
2. The Special Officer
Thethurai Primary Agriculture Co-operative Bank Limited,
Nadungal Village, Elaneerkunram Post
Cheyyar Taluk, Thiruvannamalai District.

... Respondents

PRAYER : Petitions filed Under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to consider and pass appropriate orders on the representation dated 07.10.2016 for compassionate appointment on merits within time frame as deem fit by this Hon'ble Court.

For Petitioner : Mr.A.Baskaran

For Respondents : Mr.L.P.Shanmuga Sundaram
Special Government Pleader

सत्यमेव जयते
O R D E R

The relief sought for in this writ petition is for a direction, to direct the first respondent to consider the case of the writ petitioner for compassionate appointment, based on the representation submitted by him on 07.10.2016.

2.The father of the writ petitioner, late Mr.P.Duraisami, was working as Salesman in the second respondent Co-operative Bank and died on 23.08.1993, while he was in service. The mother of the writ petitioner made a representation in the year 1994, seeking for appointment of compassionate grounds. The first respondent in his proceedings dated 12.08.1994, has rejected the same on the ground that the mother of the writ petitioner was

not possessed of the minimum educational qualification and therefore, the appointment on compassionate grounds cannot be provided.

3. The order of rejection was not challenged during the relevant point of time and the present writ petition is filed only on 25.04.2016, after a lapse of about 23 years. Thus, the writ petition itself is to be rejected, on the ground of laches. However, the principles regarding the scheme for compassionate appointment was considered by this Court. This apart, the scope of appointment on compassionate grounds itself is well enumerated in the following Judgments by this Court, which is extracted hereunder:

5. Compassionate appointment is a scheme and an exception, thus the same is to be made in accordance with the instructions issued by the Government. The authorities competent are bound to follow the instructions in its strict sense and therefore the case on hand the reason stated for rejection cannot be interfered.

6. This Court is of the opinion that consideration for appointment on compassionate ground is to be construed as violation of the Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore, it does not create a 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 does not create a vested right in favour of the claimant to be enforced through a writ proceedings. A compassionate appointment is justified when it is granted to provide immediate succour to the deceased employee. Mere death of a government employee in his harness, it 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 it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family.

7. 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 the service rules. That being so, it needs little

emphasis that the scheme or the policy, as the case may be, in 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.

8. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis by the loss of sole breadwinner. This category of appointment cannot be claimed as a matter after lapse of the period when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the para-meters of the scheme. It is pertinent to note the fact that in a liberalized world as of today there are plenty of avenues of employment available to the genera public. Most of the people are not entirely dependent on the income of a single member of the family. Keeping this new social structure in mind it would be seemingly right for the Courts to ensure that there is no abuse of the scheme of compassionate appointment either by the employer or by the applicant.

9. The million dollar question is 'Whether offering 'appointment' on compassionate ground (i.e., sympathy) is the only option /solution to mitigate 'hardship and distress of the family of an employee dying in-harness? Answer is an emphatic 'No'. Firstly, the Rules, as such, contain no provision to ensure that the-dependent who gets appointment shall continue to maintain other dependents.

10. A 'welfare state' like ours is free to initiate effective welfare scheme/s- and no one will be in a position to oppose. It is well settled that sympathy cannot be allowed to override statutory or Constitutional provisions, particularly when it is quality of the question of Welfare of the entire society and /or question of Governance. The State, like ours is free to wed to 'solemn object' to serve the society at large, purely according to the mandate under the Constitution of India. State cannot be allowed to look after 'welfare' of its own employees and their families alone.

11. In this view of the matter, this Court has to examine the scope of the scheme. The scheme being an exception. The authorities competent has to implement in its strict terms to public employment is an equal opportunity in a public employment is a constitution mandate.

12. Varieties of schemes constituted in this regard will certainly cause infringement in providing equal opportunity to all other citizens of this great nation.

13. Such being, the scope of the scheme, the Courts are also to be cautious while extending the benefit of compassionate appointment in favour of the legal heirs of the deceased employee after a lapse of many years and the legal presumption in this regard is that the indigent circumstances certainly vanishes after a lapse of long years.

4. In this view of the matter, the grounds raised in this writ petition deserves no further consideration and accordingly, the writ petition stands dismissed. However there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Registrar of Co-operative Society
Thiruvannamalai Region
Thiruvannamalai District.
2. The Special Officer
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Nadungal Village, Elaneerkunram Post
Cheyyar Taluk, Thiruvannamalai District.

+1cc to Mr.A.Baskaran, Advocate, S.R.No.62790
+1cc to Mr.L.P.Shanmuga Sundaram, Advocate, S.R.No.62687
+1cc to the Government Pleader, S.R.No.63349

W.P.No.41040 of 2016

VD(CO)
CA(09/10/2017)