

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2017

Coram

The Hon'ble Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.41813 of 2016

S.G.Sivakumaar

...Petitioner

Vs.

1. The District Collector
O/o Collectorate of Krishnagiri
Krishnagiri District.
 2. The District Revenue Officer
O/o Collectorate of Krishnagiri
Krishnagiri District.
 3. The Foresh Settlement Officer
O/o Forest Settlement Office
Krishnagiri.
 4. The Tahsildar
O/o Forest Settlement Office
Krishnagiri.
-Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records pertaining to the order passed by the 1st respondent in Na.Ka.No.27208/2011/A3 dated 02.11.2011 and the order passed by the 2nd respondent in Na.Ka.No.27208/2011/A3 dated 20.11.2011 (signed on 23.11.2015) and quash the same consequently issue direction directing the 1st respondent to consider the petitioners request of compassionate appointment by considering his representations.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.C.C.Rangarajan
Government Advocate

O R D E R

The order of rejection in Na.Ka.No.27208/2011/A3 dated 23.11.2015, rejecting the claim of the petitioner for compassionate appointment is under challenge in this writ petition.

2. The father of the writ petitioner, late.M.Gnanasekaran, was working as a Revenue Inspector (Grade - I) in the Revenue Department of Forest Settlement Office at Krishnagiri and passed away on 12.01.2001, while he was in service.

3. The learned counsel appearing for the writ petitioner states that the applications seeking compassionate appointment were filed by the petitioner on 12.04.2001 and 26.12.2001. However, the same was not considered after a lapse of many years. Repeated representations submitted by the writ petitioner were also went in vain. Thus, the writ petitioner again approached the respondents and finally the order of rejection was issued in proceeding No.Na.Ka.27208/2011/A3 dated 20.11.2011 and the same was signed by the respondent in the year 2015.

4. The order impugned in this writ petition states that the wife of the deceased employee has received terminal benefits and pension. The second son, third daughter and the fifth son are working with the Government. When the three children of the deceased employee are working in Government service, the question of considering the indigent circumstances of the family does not arise at all.

5. The basic requirement for considering the application seeking compassionate appointment is that the penurious circumstances of the family of the deceased. The very object of the scheme is to mitigate the indigent circumstances arising on account of the sudden demise of the Government employee. Thus the indigent circumstance is a vital factor to be considered while providing the appointment on compassionate grounds. Compassionate appointment being an exception cannot be considered as a regular recruitment process. Thus the terms and conditions of the scheme are to be followed in its strict sense and the scope of such an appointment cannot be stretched further so as to appoint the persons in order to provide public employment. All public employments to be made by following the constitutional schemes, principles of equality and by following the recruitment rules in force. Equal opportunity is a constitutional mandate and no citizen can be denied such an opportunity to participate in the open competitive process. If any special scheme like that of the compassionate appointment is allowed to be accepted, then the scope of the general competitive process will be affected. Thus, this Court is of the firm opinion that the scheme is an exception and the appointment to be made in its terms and conditions and the scope can never be enlarged further so as to provide appointment in Government service.

5. In this regard, the legal principles are settled by the Hon'ble Division Bench of this Court in the case of The Inspector General of Prisons vs. P.Marimuthu reported in {2016 (5) CTC 125}, wherein, the Division Bench, in paragraph Nos. 36 to 41, has held as follows:

"36. In National Institute of Technology v. Niraj Kumar Singh reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

"21. The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural

grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the

appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) by LRs. And Ors., (2005) 12 SCC 1]"

37. Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be an adult member irrespective of the period prescribed

for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment

on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in *Sushma Gosain v. Union of India* reported in 1989 (4) SCC 468.

41. In the result, the Writ Appeal is allowed. No costs. Order made in W.P(MD) No.6538 of 2009 dated 22.04.2014 is set aside. Consequently, connected Miscellaneous Petition is closed."

6. In view of the factum of this case the grounds raised in this writ petition deserves no further consideration. In general, all the applications seeking compassionate appointment should be considered by the competent authorities without any delay and the same are to be disposed of within a reasonable period i.e., to say 3 years or at last within 5 years. Applications submitted for compassionate appointment cannot be kept pending for long years and the same will affect the right of eligible candidates who seeks appointment on compassionate grounds. Thus the authorities competent are duty bound to consider such applications within a reasonable period of time under the terms and conditions of the scheme.

7. Accordingly, the writ petition stands dismissed.
However, no order as to costs.

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub Assistant Registrar

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To

1. The District Collector
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4. The Tahsildar
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Krishnagiri.

+1 C.C. to M/S.R.Marudhachalamurthy Advocate SR.NO. 63527

+1 C.C. to The Government Pleader SR.NO. 63563

सत्यमेव जयते

Writ Petition No.41813 of 2016

MN (CO)
ADD (12/10/2017)

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