



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD).No.1708 of 2015

S.Shakespeare

..Petitioner

Vs.

The Assistant Director (Survey)
District Land Survey Office,
Madurai.

.. Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records relating to the impugned order bearing No.Na.Ka.Ni.Aa11/7801/2014 dated 16.10.2014 passed by the respondent and quash the same and consequently direct the respondent to consider the petitioner for appointment under compassionate ground in the respondent's office.

For Petitioner	: Mr.K.Samidurai
For Respondents	: Mr.N.S.Karthikeyan
	Additional Government Pleader

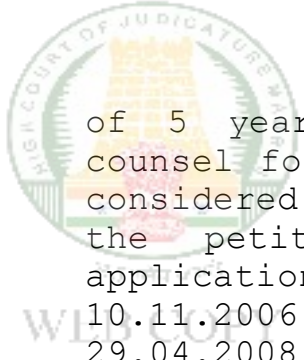
O R D E R

This Writ petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned order bearing No.Na.Ka.Ni.Aa11/7801/2014 dated 16.10.2014 passed by the respondent and quash the same and consequently direct the respondent to consider the petitioner for appointment under compassionate ground in the respondent's office.

2. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondent.

3. This writ petition has been filed to challenge the order of the respondent, dated 16.10.2014 by which the petitioner's application for appointment on compassionate ground was rejected. The petitioner himself was aged about 27 years at the time of his father's death. The legal heirship certificate was also produced by the petitioner to reveal this fact.

<https://hcservices.ecourts.gov.in/hcsecoices/> Originally, the petitioner's sister by name Hema applied for appointment on compassionate ground on 03.11.2004. However, it is alleged that due to ban on appointment for a period



of 5 years, the application was not considered. The learned counsel for the petitioner submitted that the application was not considered since the petitioner's sister was married. Thereafter, the petitioner's brother one Jeyaseelan submitted another application seeking appointment on compassionate ground on 10.11.2006. This application was also rejected by an order dated 29.04.2008 saying that the application was beyond the period of three years from the date of death of petitioner's father.

5. The petitioner states that his brother has also married and is living separately. By stating that family is still under poverty, the petitioner has submitted an application on 25.09.2014. This application was rejected by the respondent by the impugned proceedings. Before going into the facts, the legal position regarding the appointment on compassionate ground can be considered with reference to the following precedents.

5(a). The Honourable Supreme Court, in the case of **State of U.P. v. Paras Nath, reported in (1998) 2 SCC 412**, has held as follows:-

"The purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case."

5(b). The Honourable Supreme Court, in the case of **State of Gujarat v. Arvindkumar T.Tiwari, reported in (2012) 9 SCC 545**, has held as follows:-

"It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crises it finds itself facing, and not to confer any status upon it. (Vide **Union of India v. Shashank Goswami (2012) 11 SCC 307: AIR 2012 SC 2294**)"



5(c). The Honourable Supreme Court, in the case of **Haryana State Electricity Board v. Hakim Singh**, reported in (1997) 8 SCC 85, has held as follows:-

"..The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

.. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance."

5(d). The Honourable Supreme Court, in the case of **LIC v. Asha Ramchandra Ambekar**, reported in (1994) 2 SCC 718, has held as follows:-

"Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in "Merchant of Venice":

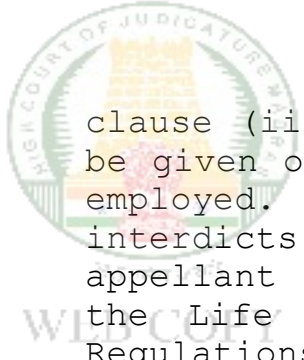
'The quality of mercy is not strain's;
It droppeth, as the gentle rain from heaven
Upon the place beneath it is twice bless'd;
It blesseth him that gives, and him that takes;'

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that 'law is the embodiment of all Wisdom'. Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be.

11. At this juncture, we may usefully refer to *Martin Burn Ltd., v. Corporation of Calcutta* (AIR 1966 Sc 529, 535: (1966) 1 SCR 543). At page 535 of the Report the following observations are found:

'A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.'

The Courts should endeavour to fine out whether a particular case in which sympathetic consideration is to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case itself, there are regulations and instructions which we have extracted above. The Court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-



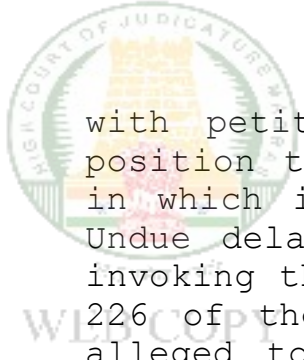
clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the circular, dated January 20, 1987, interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered."

5(e). This Court, in the case of **P.Purusothaman v. Union of India, Rep.by the General Manager, Southern Railway, Chennai and others**, in **W.P.No.12204 of 2013, dated 30.04.2013**, has held as follows:-

"It is , thus, clear that the Courts cannot direct appointments on compassionate grounds de hors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the Courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too, by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been provided otherwise. The purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments. None of these considerations can operate when the application is made long after the death of the employee. The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a Government servant who dies in harness when there is no other earning member in the family."

5(f). The Hon'ble Supreme Court, in the case of **State of Maharashtra V. Digambar**, reported in **(1995) 4 SCC 683**, has held as follows:-

"In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance



with petitioner's demands, the State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the governmental agencies, would suggest that his land was not taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

Thus, when the writ petitioner (respondent here) was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay adverted to above, disentitled the writ petitioner (respondent here) for discretionary relief under Article 226 of the Constitution from the High Court, particularly, when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay of laches. The High Court, therefore, was wholly wrong in granting relief in relation to inquiring into the allegation and granting compensation for his land alleged to have been used for scarcity relief road works in the year 1971-72. As seen from the Judgment of the High Court, the allegation adverted to above, appears to be the common allegation in other 191 writ petitions where Judgment rendered by the High Court following the Judgment under appeal and which are subject of SLPs in this Court that are yet to be registered. We have, therefore, no hesitation in holding that the High Court had gone wholly wrong in granting the relief which it has given in the Judgment under appeal, and Judgments rendered following the said Judgment in other 191 writ petitions, said to be the subject of SLPs or otherwise. All the said Judgment of the High Court, having regard to the fact that they were made in writ petitions with common allegation and seeking common relief, are liable to be interfered with and set aside in the interests of justice even though only learned counsel appearing for a few writ petitions were heard by us.

5(g). The Hon'ble Supreme Court, in the case of **Umesh Kumar Nagpal V. State of Haryana**, reported in (1994) 4 SCC 138, has held as follows:-

"For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crises is over."

<https://hcservices.ecourts.gov.in/hcservices/>

5(h). The Hon'ble Supreme Court, in the case of **Chennai**



M.W. Supply and Sewerage board V. T.T.Murali Babu, reported in **AIR 2014 SC 1141**, has held as follows:-

"Thus the doctrine of delay and laches should not be lightly brushed aside. A writ Court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant-a litigant who has forgotten the basic norms, namely, 'procrastination is the greatest thief of time' and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the Court, yet the Writ Court chose not to address the same. It is the duty of the Court to scrutinize whether such enormous delay is to be ignored without any jurisdiction. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext to some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A Court is not expected to give indulgence to such indolent persons-who complete with 'Kumbhakarna' or for that matter 'Rio Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ Court should have thrown the petition overboard at the very threshold."

6. Considering the scope of the law laid down by this Court as well as the Hon'ble Supreme Court in the above judgments, this Court is not in position to consider the petitioner's case. The petitioner has applied for the first time in 2014 with the delay of 13 years. Earlier, the petitioner relies upon the application filed by his sister which was in time. Though, the petitioner's sister filed an application in time due to her illness, she did not pursue the application. The petitioner did not file any application in continuation of her



application within reasonable time. After the petitioner's sister marriage, the petitioner's brother filed an another application and the same was also dismissed on the ground of delay and thereafter, the petitioner has filed the present application without an explanation for the delay. The petitioner cannot rely upon the successful applications to circumvent the delay of 13 years.

7. The petitioner is an individual entitled to be considered for compassionate ground with any other dependant in the family. In the present case each members of the petitioner family made an attempt and no one got appointment. The petitioner for the first time made an application in 2014. The petitioner's application cannot be considered, as one in continuation of the earlier application, as the application does not give any further particulars except the individual performance of the petitioner. In such circumstances, the order rejecting the application cannot be found fault with.

8. As a result, this petition is dismissed. No Costs.

Sd/-

Assistant Registrar(Protocol)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

The Assistant Director (Survey)
District Land Survey Office,
Madurai.

+1cc to M/S.K.SAMIDURAI, Advocate SR.No.60640

+1cc to Special Government Pleader, SR.No. 60588

MRN/TA

MAS/MR-KKR/SAR1:07.07.2017:7P-4C

ORDER MADE IN
W.P. (MD) .No.1708 of 2015
15.06.2017