



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2017

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.(MD) No.7246 of 2015

R.Balasubramanian

... Petitioner

Vs.

1. The Superintendent Engineer (Incharge)
Dindigul Distribution District,
Meenakshi Nayakkanpatti,
Dindigul.

2. R.Ramuthai
3. R.Rajesh Kannan
4. R.Gomathi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in impugned proceedings in க.எண்.012616/493/நி.பி.1/உ.4/கோ.தனி/2014 dated 29.12.2014 and quash the same and consequently to direct the 1st respondent to give compassionate appointment to petitioner.

For Petitioner : Mr.K.Sudalaiyandi
For R-1 : Mr.M.Murugan
Government Advocate.
For R-2 to R-4 : R.Thangasamy

ORDER

This Writ Petition has been filed, for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the first respondent, dated 29.12.2014 and to direct the first respondent to give compassionate appointment to the petitioner.

2. The impugned order dated 29.12.2014, is an order by which the first respondent has rejected the petitioner's application for appointment on compassionate ground. The petitioner's father one Mr.R.Raman, while he was in service as Accountant under the first respondent, died on 02.12.1995. The petitioner was hardly two years old at the time of his father's death. However, the petitioner made an application to the first respondent on 03.05.2014, along with the necessary documents and requested the first respondent to give



appointment on compassionate ground to the petitioner. However, the first respondent refused to consider the application on the ground that the application is filed beyond the period of three years.

3. The learned counsel appearing for the petitioner submits that there was serious dispute between the petitioner and the second wife of his father and her children and that therefore, the petitioner could not pursue the respondent for appointment on compassionate ground. The petitioner has filed an application on 03.05.2014, which is well in three years.

4. The dispute between the petitioner and his mother on the one side and second wife and her children on the other side may be for getting retirement benefits of the petitioner's father and there is nothing to indicate that there was dispute with regard to claim for appointment on compassionate ground. Pendency of any proceedings or Civil Suit is not brought to the notice of this Court. In such circumstances this Court cannot assume some dispute and justifying the inordinate delay in approaching this Court for appropriate relief.

5. The petitioner has submitted that he was born on 04.06.1993. According to him he become major on 04.06.2011. The application was filed by the petitioner on 03.05.2014 and therefore according to him the application was filed well within three years from the date of the petitioner attaining majority and hence his application cannot be dismissed on the ground of delay. The submission of the learned counsel for the petitioner is seriously disputed.

6. 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."

7. 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) "

8. 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."

9. 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 Calcuttta* (AIR 1966 Sc 529, 535: (19660 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."

10. 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."

11. Hence, having regard to the well settled principles of law on the basis of which the claim for compassionate appointment should be consider by the Government. This Court is not in a position to entertain this Writ Petition and it deserves dismissal. Hence this Writ Petition is dismissed and there is no order as to costs.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

The Superintendent Engineer (Incharge)
Dindigul Distribution District,
Meenakshi Nayakkanpatti,
Dindigul.

+ 1 CC TO Mr.K.SUDALAIYANDI, ADVOCATE IN SR No. 60710

GSP/CMR

TE/JC/SAR-I : 04/07/2017 : 5P/3C

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