

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.08.2018

Pronounced on : 02.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 26071 of 2009

M.Ezhumalai

... Petitioner

vs.

1. The Chief Engineer,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
 2. The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
Chengalpattu, Kancheepuram District.
- ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings in letter No. 09427/Ni.Bi.3/Assistant/3/Po/Way.Va.2008 dated 24.11.2008 on the file of the 2nd respondent herein quash the same and consequently direct the respondents herein to consider the appointment of the petitioner on compassionate grounds occurred due to the death of the petitioner's father E.Mani, while he was in service.

For Petitioner : Mr.A.R.Suresh,
for M/s.J.Muthukumaran.

For Respondents : Mr.P.R.Dhilip Kumar

O R D E R

The instant writ petition is for a writ of mandamus calling for the records relating to the proceedings in letter no.09427/Ni.Bi.3/Assistant/3/Po.Way.Va.2008 dated 24.11.2008 on the file of the second respondent being the Superintending Engineer, Chengalpattu Electricity Department Circle and consequently direct the respondents herein to consider the appointment of the petitioner on compassionate grounds according

to the death of the petitioner's father E.Mani while he was in service.

2. It is contended by the petitioner that he has studied till the 10th standard at cheyyur government higher secondary school. His date of birth is 10.5.1990. It is contended by him that his father E.Mani worked as a wire man in the office of the second respondent. His father passed away on 24.8.2001. At the time of his death he had completed 10 years of regular service.

3. It is stated that the petitioner's father left behind him his wife, his mother, the petitioner and two daughters. It is stated that his father was the sole breadwinner of the family and that at the time of his death the petitioner and his two sisters were aged about nine and five respectively. It is stated that his mother was aged about 30 years at the time of his death but she was illiterate and therefore could not seek compassionate appointment.

4. The petitioner submits that on attaining majority he filed a representation on 14/10/08 for appointment on compassionate basis. It is stated that along with the representation all the requisite certificates that are necessary for appointment on compassionate basis were submitted.

5. It is stated that the representation was rejected by the impugned order dated 24/11/08 by stating that the application for compassionate appointment should have been made within three years from the date of the death of the employee. The order also states that the person seeking compassionate appointment should have attained the age of 18 and should have studied up to 8th standard. It was stated that since the application was made after three years of the date of death of the employee, the application for compassionate appointment cannot be considered.

6. The petitioner in the present case proceeds on the footing that the family has a right to get an appointment on compassionate basis and since nobody in the family has been given an employment he is entitled to get appointment on compassionate ground on his attaining majority.

7. It is well settled that employment on compassionate grounds is given to enable the family of the deceased employee to tide over the sudden crisis resulting due to the death of the bread winner who has left the family in poverty. The Hon'ble Supreme Court in the case of Sanjay Kumar vs. State of Bihar reported in (2000) 7 SCC 192 read as under:-

"We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate

appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also Significant to notice that on the date when the first application was made by the petitioner on 02.06.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

8. Similarly the Hon'ble Supreme Court in the case of Local Administration Department and another vs. M. Selvanayagam reported in (2011) 13 SCC 42, the Supreme Court has observed as under:

"It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme 9 and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be

made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.

14. In the facts of 10 the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments."

9. Another order of the Hon'ble Supreme Court in the case of Jagdish Prasad vs. State of Bihar reported in (1996) 1 SCC 301 where again the son had filed an application years after the death of the father on the ground that the compassionate circumstances continue to subsist was rejected by observing as under:-

"2. The High Court had dismissed the writ petition seeking appointment of the appellant on compassionate grounds. The admitted fact is that he was four years old at the time when his father died in harness in the year 1971. He filed the writ petition after attaining majority in 1994 for a direction to appoint him on compassionate grounds which was negatived.

3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be

appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules."

10. Similarly, in State of U.P. vs. Paras Nath reported in (1998) 2 SCC 412 the Hon'ble Supreme Court while dealing with a case where 17 years of the death of the father the son made an application for appointment on compassionate grounds was rejected by holding as under:-

"4. Seventeen years after the death of his father, the respondent, on 8-1-1986, made an application for being appointed to the post of a Primary School Teacher under the said Rules. His application was rejected. He, thereafter, filed a writ petition before the High Court. This writ petition was allowed by the High Court and an appeal from the decision of the Single Judge of the High Court was also dismissed by the Division Bench of the High Court. Hence the State has filed the present appeal.

5. The purpose of providing employment to a dependent 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.

6. We may, in this connection, refer to only one judgment of this Court in the case of Union of India v. Bhagwan Singh,. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This Court observed:

"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."

7. No such considerations would normally operate seventeen years after the death of the government servant. The High Court was therefore, not right in granting any relief to the respondents."

11. It is settled law that claim for compassionate appointment is traceable only to the scheme framed by the employer and there is no right of what so ever nature to claim compassionate appointment of any ground other than those provide for under the scheme. Compassionate appointment is not a vested right which can be claimed after lapse of time and much after the crisis is over. The continuation of the indigency alone cannot be considered by the department while examining the request of the applicant for appointment of compassionate ground. In the present case the petitioner could not claim right to appoint of compassionate ground years after his father had passed away. Appointment on compassionate ground can be made only in accordance with the scheme.

12. A perusal of the order dated 24.11.2008 shows that the application for compassionate appointment could be considered only if the same is made within 3 years of the date of the deceased employee, the person seeking compassionate appointment should have passed atleast 8th standard and should have attained the age of 18. None of the conditions have been satisfied in this case as stated above further seven years have passed after the death of Mr.E.Mani, father of the petitioner. Since compassionate appointment is not a matter of right, the writ petitioner cannot succeed and hence the same is dismissed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Chief Engineer,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.

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2. The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
Chengalpattu, Kancheepuram District.

+1 cc to Mr.J.Muthukumaran, Sr.No.76281
+1 cc to Mr.P.R.Dhilip Kumar, Sr.No.76260

Order made in
W.P.No. 26071 of 2009

VGI (CO)
CSL/14.12.2018



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