

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018

Pronounced on : 25.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A..No. 1480 of 2018

S.Rajesh Appellant/Petitioner

Vs.

1.Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No. Pumping Station Road,
Chindadripet, Chennai- 600 002.

2.The Staff Manager,
Chennai Metropolitan Water Supply
and Sewerage Board,
No. Pumping Station Road,
Chindadripet,
Chennai- 600 002.

.... Respondents/Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order passed by the learned Judge in W.P.No.11002 of 2018, dated 27.04.2018 and consequently allow the prayer in the writ petition.

सत्यमेव जयते

Prayer in W.P.No.11002 of 2018:

Petition filed under Article 226 of the Constituion of India praying for issuance of Writ of Certiorarified Mandamus to call call for the records in respect of the letter dated 23.03.2017 forwarded under covering letter No.CMWSSB/ P&A (RTI) Dept/ 5360/ 2018 dated 14.03.2018 issued by the 2nd respondent quash the same and direct the 1st respondent to consider the compassionate appointment to the petitioner in the place of his mother.

For Appellant : Mr.P.Ayyamperumal

JUDGMENT

SUBRAMONIUM PRASAD, J.

This writ appeal is directed against the judgment and order dated 27.04.2018 passed in W.P.No.11002 of 2018, the learned single Judge by the impugned judgment has dismissed the writ petition.

2.The appellant is the writ petitioner and has filed the instant writ petition challenging the order dated 14.03.2018 issued by the Staff Manager, Chennai Metropolitan Water Supply and Sewerage Board, Chennai rejecting the claim of the appellant for compassionate appointment.

3.Father of the petitioner one M.Sekar was employed as M.O.G.R-II in the Pumping Station of Staff Manager, Chennai Metropolitan Water Supply and Sewerage Board, Chennai. The father of the appellant passed away on 30.09.2003 in harness.

4.On the death of M.Sekar, mother of the appellant submitted an application, dated 13.01.2004, seeking appointment on compassionate ground. When the application was filed the petitioner was a minor.

5.On attaining the age of majority, mother of the petitioner submitted a fresh application dated 01.11.2011 seeking appointment on compassionate ground. This application dated 01.11.2011 has been rejected by an order passed on 14.03.2018 which has been impugned in the writ petition. The order rejecting the application submitted by the mother reads as under:-

"A compassionate representation dated 13.01.2004 of Smt.S.Dhanalakshmi, seeking compassionate appointment in the place of her husband M.Sekar, who was working in CMWSSB, died on 30.09.2003 while in service, was received in this office and the same is kept at wait list No.773. Thereafter she requested compassionate appointment for her son S.Rajesh vide representation dated 01.11.2011. At this juncture reference was made to the Government seeking clarification as to whether the compassionate appoint could be considered to another legal heir when a representation was

already made by another legal heir seeking compassionate appointment and kept pending. The Government has clarified that there is no G.O to change the compassionate representation of one legal heir, which was already made, to another legal heir. Thus, the change of compassionate appointment to the alternative legal heir S.Rajesh is rejected as per rules."

Rejection order was challenged in W.P.No.11002 of 2018.

6. After referring to a number of judgments, the learned single Judge, dismissed the writ petition. The learned single Judge was of the view that the compassionate appointment cannot be claimed as a matter of right and that the scheme framed for appointing persons on compassionate basis being in the nature of the concession has to be implemented strictly. Any scheme for compassionate appointment is provided in order to mitigate the circumstances arising on account of sudden death of the employee and therefore the scheme has to be implemented within a reasonable period time. The learned single Judge was also of the view that the scheme being a concession, the same cannot be claimed by two legal heirs. The learned single Judge held that after a lapse of 14 years from the date of death of the deceased employee, the scheme for compassionate appointment cannot be extended in favour of the writ petitioner. The learned single Judge held that the compassionate appointment is justified only when it is granted to provide immediate relief to the deceased employee. Mere death of a Government employee in harness, does not entitle a family to claim compassionate appointment. The competent authority has to examine the financial condition of the family of the deceased employee and only if it is satisfied that without providing employment, the family will not be able to tide over the crisis. The learned single Judge therefore held that the reasons given by the respondents while rejecting the application for compassionate appointment after about 9 years does not require any interference and is correct.

7. Being aggrieved over the decision in W.P.No.11002 of 2018, dated 27.04.2018, instant appeal is filed.

8. Heard. The learned counsel for the appellant relied on G.O.Ms.No.314 Dated 13.11.1991 passed by the State Government. Para 3 of the G.O.M.S.No.314 dated 13.11.1991 which has been quoted in the memorandum of the grounds of writ appeal is reproduced as under:-

" 1. Normally the dependent of a deceased Government servant should apply for appointment on compassionate grounds only to the office, where the Government servant was in service at the time of his death.

2.The Head Office should then verify the facts in the petition like the date of death, the indigent circumstances of the family, the eligibility of the applicant for employment on compassionate grounds with reference to his educational qualifications etc.,

3.After verification, the Head Office should, within a month from the date of receipt of application from the dependent, submit the application along with his report to the Head of the Department indicating also whether any vacancy exists in his office for providing employment to the applicants.

4.After considering the request, if any vacancy exists either in the Office in which the deceased Government servant was working at the time of his death or in his office, the Head of the Department should issue orders of appointment immediately and in any case within 15 days from the date of receipt of the report from the Head Office, provided the applicant satisfied all conditions relating to age, educational qualifications etc., If any relaxation is necessary, he should send necessary proposals within 15 days to the Government in Administrative Department for orders.

5.If no vacancy exists either in his office or in the office in which the deceased Government servant was working, then he should ascertain from the various Heads of Offices under his control whether any vacancy exists in anyone of these offices to provide employment to the dependent with reference to his educational qualifications etc. This exercise should be completed within a period of 60 days. Vacancies that may arise in the near future, that is to say for the next 12 months should also be taken into consideration for the purpose. If vacancy is likely to arise in the near future, the applicant may be informed of the fact and advised to wait till then and as soon as a vacancy arises, he should be given employment.

6.In case the head of the Department finds that there is no vacancy in any of his offices or in the near future or where the dependent of the deceased Government servant possesses qualifications which do not permit his or her appointment to any post in that

Department also where the dependent possesses better qualification for appointment in other departments, then, the head of Department should send the name and all the relevant particulars to the Collector of the District in which the deceased Government servant last worked.

7.The Collector of each District should maintain a special register for this purpose and enter therein the name and other details of such departments. This Register will be maintained separately.

8.Whenever a vacancy in the category of Office Assistant/Record Clerk / Junior Assistant, Typist etc., arises in any department including Head of the Department, referred to in instructions (6) above, the Head of the Department should first address the Collector of the district in which the vacancy has arisen and find out whether any department of a deceased Government servant is available for consideration for appointment to that post.

9.On receipt of such enquiry from a head of Department, the Collector shall send the name or names and details of the dependents from the Special Register, depending upon the number vacancies and as per the seniority, for consideration for appointment in that department.

10.Xxxxxxxx

11.Xxxxxxxx

12.The district collectors should send a quarterly report to the Government in Labour and Employment Department to watch the progress of the "Special Register" proposed for dependents of the deceased Govt. servant. The reports should be sent by 15th of the month following the quarter.

4.All Head of Departments and Collectors are requested strictly to adhere to the restrictions issued in para 3 above and also to the time limits prescribed. They should acknowledge the receipt of the Government Order immediately."

9.A reading of the said Government Order shows that it does not create any right in favour of the family where the breadwinner has passed away in harness to claim a Government employment. It only lays down the procedure to be followed while considering an application for appointment on compassionate basis.

10.The learned counsel for the apellant stated that on the death of his father his mother gave a representation on 13.01.2004 which had not been considered and no action had been taken on the representation. The learned counsel for the appellant submitted that when the appellant's father passed away the appellant was a minor and therefore he is entitled to seek compassionate appointment in place of his mother and since the representation of the mother had not yet been disposed of his representation ought to have been allowed and he should have got a suitable appointment on compassionate.

11.The learned counsel for the petitioner also placed reliance on the judgment of a Division Bench passed by this Court in W.A.No.44 of 2016. According to him the said judgment applies in all force to the facts of this case. The contention of the petitioner is ill-founded. The facts in W.A.No.44 of 2001 on which reliance is being placed are entirely different. In that case the reason given to reject the application for compassionate appointment was that on the date of death, the applicant therein had not attained the age of 18 and that the application was not made within 3 years from the date of death of the employee. This is not the case here. The mother of the petitioner had filed an application in the year 2004 itself. Fresh application has been made by the appellant herein after about 9 years the death of M.Sekar for employment and two applications for compassionate appointment cannot be entertained. 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 his mother has not been given an employment he is entitled to get appointment on compassionate ground. The petitioner also relied on another judgment of the Division Bench passed by this Court in W.A.No.205 of 2017 wherein the writ petition had been allowed only on the basis that the representation for compassionate appointment was rejected after considerable delay. The reliance placed by the learned counsel for the petitioner on the judgment of the Hon'ble Supreme Court in Subhadra vs. Ministry of Coal and another reported in (2018) 11 SCC 20 is also not well founded. A perusal of this judgment passed by the Hon'ble Supreme Court would show that the same has been passed by the Hon'ble Supreme Court on entirely different facts. In that case employment was assured to the family of the deceased employee in terms of a bipartite agreement entered into between the bank and its employees which is not the fact in the present case.

12.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

learned single judge has relied on the judgment on Sanjay Kumar vs. State of Bihar reported in (2000) 7 SCC 192. The learned single judge has quoted as para 3 of the said judgment which are similar to facts of the present case. Even at the cost of the repetition the said para 3 reads 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."

13. 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 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."

14. 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."

15. 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."

16. The learned single Judge has placed reliance on number of other cases wherein it was held 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 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 is right to appoint of compassionate ground years after is father had passed away. Further the letter rejecting the claim of the petitioner states that the respondents made a reference to the Government seeking clarification as whether the compassionate appointment could be considered to another legal heir when a representation was already made by another legal heir seeking compassionate appointment is pending. The Government clarified that there was not possible. Appointment on compassionate ground can be made only in accordance with the scheme. The order of single judge does not warrant any interference.

17. The writ appeal is devoid of merits and deserves to be dismissed. No costs.

gsp

After pronouncing the judgment, Mr.P.Ayyamperumal, learned counsel for the appellant sought for leave to file an appeal to the Hon'ble Supreme Court.

2. Article 134 (A) of the Constitution of India, reads thus:

"Certificate for appeal to the Supreme Court:-
Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,-

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

3. On the facts and circumstances of the case, we are of the view that case does not involve a substantial question of law. Hence, certificate prayed for is, rejected.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No. Pumping Station Road,
Chindadripet, Chennai- 600 002.

2.The Staff Manager,
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+1cc to Mr.P.Ayyamperumal, Advocate Sr.49613

W.A..No. 1480 of 2018

kk[co]
srg 2/7/2018