

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.07.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24523 of 2007

K.Nishanth Kumar

... Petitioner

Vs.

1.The Director General of Police,
Office of the Director General of Police,
Chennai - 600 004.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Egmore,
Chennai - 600 008.

3.The Joint Commissioner of Police,
Office of the Joint Commissioner of Police,
North Zone,
Chennai - 600 011.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to calling for the records of the 1st respondent in his memorandum dated 07.06.2007 bearing No. Rc.No.179106/C.A. 1/2006 and quash the same and direct the respondents to forthwith appoint the petitioner on compassionate grounds to a post commensurate to his qualification.

For Petitioner : Mr.R.Krishna Prasad

For Respondents : Mr.K.Ravikumar,

Additional

Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the impugned memorandum dated 07.06.2007 issued by the 1st respondent rejecting the request of the petitioner for compassionate appointment.

2.The case of the petitioner is that his father late Unnikrishnan was employed as a Constable attached to the B-1 North Beach Police Station, which comes under the jurisdiction of the 2nd respondent and under the over all control of the first

respondent. While he was in service, the petitioner's father met with a fatal accident on 11.07.1984 and died in harness, leaving the petitioner, his mother and his younger brothers as his legal heirs. At that time, the petitioner was aged only 7-1/2 years. After the petitioner completed the S.S.L.C examination and after he attaining the age of 19 years, the petitioner's mother made a representation on 03.04.1996 before the respondents requesting to give compassionate appointment to the petitioner. Since there was no representation, she again sent another representation dated 24.10.1996. After receipt of the representation made by the petitioner's mother, on 30.12.1996 the Additional Director General of Police and Commissioner of Police had address letter to the Superintendent of Police, Calicut, Kerala, with a copy marked to the petitioner, directing the Superintendent of Police to collect the certificates listed in the said letter and forward the same to his office. However, the petitioner's mother forwarded all the certificates listed in the said letter to the office of the 2nd respondent. Since no response from the respondents, the petitioner sent another letter on 14.01.1999 to the Additional Director General Police. In the mean time, the petitioner has also completed B.A. Degree. By letter dated 7.04.2000, the petitioner has enclosed all the certificate and sent the same to the 2nd respondent. Even thereafter there were many communications between the petitioner and the respondents. While so, the 1st respondent has issued the impugned memorandum dated 07.06.2007 rejecting the request of the petitioner for compassionate appointment, on the ground that the vacancies could not be reserved for the petitioner and the request for compassionate appointment was made only after 12 years. Aggrieved over the same, the present writ petition has been filed by the petitioner.

3. Heard the learned counsel for the petitioner as well as the learned counsel Additional Government Pleader appearing for the respondents.

4. On a perusal of the entire records it seen that the petitioner's father died in the year 1984 and at the time of demise his father, the petitioner was aged only 7 1/2 years. After he attained majority, the application for compassionate appointment was made by the petitioner's mother only on 03.04.1996 that after lapse 12 years. Since the petitioner did not prove that his family was suffering from the financial crisis, the request of the petitioner was not considered by the respondents. The request for compassionate appointment shall be made within a reasonable time limit. The object of the compassionate appointment is only to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner. In this regard, a useful

reference could be made in the decision reported in AIR 2000 SC 2782 [Sanjay Kumar Vs. State of Bihar and others, wherein the Hon'ble Supreme Court has held as follows_

"2.Learned senior counsel appearing on behalf of the petitioner has placed strong reliance on the decision of a learned single Judge of the Patna High Court in Chandra Bhushan V. State of Bihar, (1997) 1 Pat LJR 626. Learned senior counsel points out that it was held in that case that an applicant's right cannot be defeated on the ground of delay caused by authorities which was beyond the control of the applicant. Learned senior counsel further points out that instead of following the above judgment, the same learned Judge has now held on 21.04.1997 that the application is time-barred. Learned counsel has placed before us a judgment of this Court in Director of Education V. Pushpendra Kumar, (1998) 2 Pat LJR (SC) 181: (1998 AIR SCW 2122 : AIR 1998 SC 2230 : 1998 LAB IC 2123). He submits that, in this case, a direction was given to create supernumerary posts.

3.We are unable to agree with the submissions of the learned 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 supra. 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 is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

Similarly, in the decision reported in (1994) 4 SCC 138 [Umesh Kumar Nagpal Vs. State of Haryana], the Hon'ble Supreme Court has held as follows:

"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 favour. 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 after the crisis is over."

The dictum laid down in the above decisions would squarely be applicable to the present facts of the case. In the light of the above decisions, this Court does not find any merit in the writ petition and no valid ground has been made out by the petitioner to make an interference with the impugned order passed by the 1st respondent.

In the result, the writ petition fails and the same is dismissed. No costs.
gmd

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Director General of Police,
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3. The Joint Commissioner of Police,
Office of the Joint Commissioner of Police,
North Zone, Chennai - 600 011.

+1cc to Government Pleader SR.NO.51855

+1cc to M/s.Sarvabhauman Associates, SR.NO.50940

GMI (CO)

sm:16.10.2018

W.P.No.24523 of 2007