

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.7069 of 2003
and
M.P.M.P.No.9121 of 2003

P.D.Sangeetha

.. Petitioner

Vs.

1.Employees State Insurance Corporation,
Represented by its Director General,
Panchdeep Bhavani,
Kotla Road, New Delhi - 110 002.

2.Employees State Insurance Corporation,
Represented by its Regional Director,
No.143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the order dated 12.11.2002 passed by the Second Respondent in No.A.12/22/2/2002 E_I(B) and direct the respondent to appoint the petitioner on compassionate grounds.

For Petitioner : Mr.K.Shanmugakani

For Respondents : Mr.C.Sethu
for Mr.K.C.Ramalingam
(ESI Corporation)

ORDER

The present Writ Petition is filed challenging the order dated 12.11.2002 passed by the Second Respondent in No.A.12/22/2/2002 E_I(B) and direct the respondents to appoint the petitioner on compassionate grounds.

2.The petitioner is the daughter of one P.Devarajan, who died in harness on 15.07.1994, leaving behind his widow i.e., mother of the petitioner and her elder sister, while he was

working as Head Clerk in the second respondent Corporation. The petitioner applied for compassionate appointment. The petitioner has stated that she has passed Plus Two examination conducted by the Tamil Nadu Board of Secondary Education. The second respondent informed the petitioner that she has not attained the requisite age and her application was kept pending. The second respondent by his letter dated 25.06.1998 directed the petitioner to produce the certified copies of her educational qualification and age proof. The petitioner submitted the same. The second respondent by the letter dated 15.06.1999 informed the petitioner that her case is not a fit case for appointment on compassionate ground.

2(a). Again the petitioner and her mother gave representation to the respondents for appointment on compassionate ground. The petitioner filed W.P.No.29457/2002 for a direction to the respondents to consider her appointment on compassionate ground. This Court by the order dated 08.08.2002 disposed the Writ Petition directing the respondents to consider the representation of the petitioner's mother dated 02.02.2001 and notice sent through advocate dated 30.04.2002 on merits and in accordance with law after giving opportunity to the petitioner. The second respondent called the petitioner on 03.10.2002 and 09.10.2002 and enquired about her family condition. By the impugned order dated 12.12.2002 stated that the petitioner cannot be appointed on compassionate ground on the ground that as the number of appointments already made has exceeded 5% quota in Tamil Nadu Region and application for appointment on compassionate ground has to be made within one year and it cannot be kept alive for 5 or 6 years. The reason given by the respondents rejecting the request of the petitioner is invalid and contrary to the well settled judicial pronouncements. The impugned order is illegal and the compassionate appointment is given only to help the family of the deceased and prayed for allowing the Writ Petition.

3. The respondents filed counter affidavit and 3 additional counter affidavits. Mr.C.Sethu for Mr.K.C.Ramalingam, learned counsel appearing for the respondents contended that as per the Government of India policy, compassionate appointment can be considered only to the extent of 5% of the vacancy allotted for direct recruitment quota and as per the instructions, the case of the compassionate appointment can be considered within a year from the date of death of a Government servant. In the present case, 5% quota exceeded and hence the petitioner cannot be considered for compassionate appointment. As per the Circular No.14014/19/2002-Estt(D) dated 05.05.2003, the application for compassionate appointment cannot be considered after a lapse of three years.

3(a). Further, the petitioner's family is not in an indigenous circumstances. As per the direction of this Court,

the respondents filed additional counter affidavits giving names of the persons appointed on compassionate ground in Tamil Nadu Region. The respondents have stated that 23 vacancies were assigned in direct recruitment quota. On further direction by this Court, the respondents have furnished details of death of employees, the date of application, the date of rejection and the date of appointment by the first respondent. The learned counsel appearing for the respondents further contended that legal heir of the deceased employee cannot claim compassionate appointment as a matter of right. Only when the deceased employee left the family without any means of livelihood, the compassionate appointment can be granted and the said appointment cannot be granted after lapse of reasonable period and prayed for dismissal of the Writ Petition.

4. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the entire materials on record.

5. From the materials available on record it is seen that respondents have not given any reason in the letter dated 15.06.1999 for rejecting the application of the petitioner on compassionate ground except stating it is not a fit case for appointment on compassionate ground. On further representation by the petitioner, her mother and notice sent through advocate and order of this Court, the respondents again rejected the request of the petitioner for compassionate appointment on the ground that already 5% quota for appointment on compassionate ground had exceeded and the application for compassionate appointment cannot be kept alive for 5 or 6 years and application has to be considered within one year. In the counter affidavit filed by the respondents in addition to above grounds, the respondents have stated that petitioner's family is not in an indigenous condition. This was not a ground in the impugned order for rejecting the request of the petitioner for compassionate appointment. It is an improvement in the counter affidavit after passing of the impugned order. The respondents in the additional counter affidavit filed on 23.12.2009, have given details of application received for compassionate appointment, the appointment made and also the details of the application made by the petitioner. The comparative details as given by the respondents are as follows:

Sl .N o	Applicant	Date of death of official	Details of Date of applications for compassionate appointment	Date of rejection	Date of HQrs. Appointment letter
1	D Thanigaivel	05-10-1992	07-11-1992	06-04-1994	26-12-1996
2	V Ravishankar	31-08-1990	26-01-1993	06-04-1994	26-12-1996

Sl .N o	Applicant	Date of death of official	Details of Date of applications for compassionate appointment	Date of rejection	Date of HQrs. Appointment letter
3	A Jayakrishnan	19-08-1990	08-03-1991 28-01-1993	06-04-1994	26-12-1996
4	Sangeetha	15-07-1994	24-10-1997	25-05-1999 12-11-2002	-

A reading of the said details shows that the three persons who were appointed have not made application within one year from the date of death of the employee. In case of one A.Jayakrishnan, who is at serial no.3 in the list, two dates of application are mentioned namely 08.03.1991 and 28.01.1993. The petitioner has stated in the affidavit that she made application immediately after the death of her father when she was aged 16 years at the time of death of her father. According to the petitioner, the respondents kept the said application pending till the petitioner attained the age of 18 years. The respondents have not denied the said contention in any one of the counter affidavits filed by them. But in the additional counter affidavit dated 23.12.2009, the respondents have not mentioned the date of the first application made by the petitioner in the year 1994 itself. It is pertinent to note that the respondents have referred to the application made by A.Jayakrishnan on 08.03.1991 and 28.01.1993 when the employee died on 19.08.1990. From the details furnished by the respondents in the counter affidavit dated 23.12.2009, it is seen that the request of the persons appointed on compassionate ground were rejected on 06.04.1994. But the first respondent has given compassionate appointment to all the three persons by the order dated 26.12.1996. This clearly shows that the respondents have considered the application for appointment even after 4 years and 6 years of the death of the concerned employee. While so, the respondents have rejected the request of the petitioner stating that it cannot be kept pending for more than 4 or 5 years. The petitioner had stated that she was 16 years on 15.07.1994, when her father died and she had passed Plus Two examination conducted by the Tamil Nadu Board of Secondary Education. When such is the case, the petitioner attained majority in the year 1996 itself and the respondents ought to have considered the case of the petitioner along with three persons when the order was passed on 26.12.1996 itself granting compassionate appointment to the three persons mentioned in the counter affidavit filed by the respondents on 23.12.2009. This clearly shows that the respondents have discriminated the

petitioner in considering her application for appointment on compassionate ground and tried to improve the case by adding additional reason in the counter affidavit. The Writ Petition is of the year 2003. The Hon'ble Apex Court in a similar issue in the judgment reported in (2018) 11 SCC 201, [Subhadra Vs. Ministry Of Coal And Another], wherein at paragraph Nos.10.1 to 10.3, it has been held as follows:

"10.1) The second respondent is directed to appoint one son of the appellant, who has otherwise become major as of now, as per the choice of the appellant, within two months from today. Needless to say that the appointment will be commensurate with the qualification and entitlement of the incumbent.

10.2) From 01.02.2004, as ordered by the High Court, the appellant shall be paid Rs. 3,000/- per month along with interest at the rate of 7.5% from the respective dates when the amount became due.

10.3) Towards all other claims on account of loss of employment for the last 13 years, as far as the appellant is concerned, it would be just, fair and reasonable that a lumpsum amount is paid to the appellant, which we fix as Rs. 5,00,000/- (Rupees Five Lakhs). This amount shall also be paid to the appellant within two months from today.

6. The ratio in the said judgment is squarely applicable to the facts of the present case. Applying the same principle and age of the petitioner instead of directing the respondents to give appointment on compassionate ground, it is suffice to direct the respondents to pay a lump sum of Rs.10,00,000/- to the petitioner on account of loss of employment for 23 years from 1996 when the petitioner became major.

7. With the above direction, this Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

krk

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhavani,
Kotla Road, New Delhi - 110 002.
2. The Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

+1cc to Mr.K.C.Ramalingam, Advocate, SR.No.69531

W.P.No.7069 of 2003 and
M.P.M.P.No.9121 of 2003

Kak(30/10/2019)



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