

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6278 of 2018

BharathiRaj

...Petitioner

vs

- 1.The Government of Tamil Nadu
Rep.by its Secretary to the Government
Municipal Administration and Water Supply
Department
Fort St.George, Chennai - 9.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Omanthoor Government Estate,
Anna Salai, Chennai - 2.
- 3.The Director of Town Panchayats
Kuralagam
Chennai - 108
- 4.The District Collector,
Villupuram District.
- 5.Commissioner,
Vikkiravandi Town Panchayats
Vikkiravandi, Villupuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to promote the petitioner to the post of Junior Assistant.

For Petitioner : Mr.T.Elumalai

For Respondents: Mr.R.S.Selvam, Government Advocate
for R1, R3 & R4

Dr.M.Devendran for R2

Mr.I.Sathish for R5

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to promote the petitioner to the post of Junior Assistant.

2.The facts in nutshell to be considered in the present writ petition is that the father of the writ petitioner, Late Thiru.Kamaraj was employed as Sweeper in Vikkiravandi Town Panchayat and he was died during the year 2008, while he was in service. The writ petitioner submitted an application seeking appointment on compassionate grounds.

3.The case of the writ petitioner was considered by the respondents and the writ petitioner was appointed on compassionate grounds in proceedings dated 26.11.2008 and the order of appointment is enclosed in page no.3 of the typed set of papers, which stated that the writ petitioner was appointed on compassionate grounds in the post of Sweeper. The conditions of appointment also has been stated in the order of appointment. From the year 2008 onwards, the writ petitioner is working in the Post of Sweeper.

4.The learned counsel for the writ petitioner states that the petitioner is continuously giving representations to the respondents from the year 2008 onwards. The present writ petition was filed on 8th March 2018, after a lapse of 10 years from the date of his appointment to the Post of Sweeper with a claim that the writ petitioner ought to have been appointed in the Post of Junior Assistant on compassionate grounds at the first instance.

5.The learned counsel for the writ petitioner states that the Government orders says that the compassionate appointment to be given in commensuration with the educational qualifications of the person, who is claiming appointment on compassionate grounds. The writ petitioner has completed Higher Secondary Course. Therefore, he says that he is eligible and qualified for appointment to the Post of Junior Assistant and the respondents had appointed him in the Post of Sweeper on the compassionate grounds instead of appointing him in the Post of Junior Assistant.

6.The learned counsel for the writ petitioner states that after his appointment to the post of Sweeper, the writ petitioner had pursued his higher studies and completed B.A. (History) in May 2012-2013 through Correspondence Course.

7.The learned counsel for the writ petitioner further states that this Court passed an order on 22.04.2010 in W.P.(MD).No69 of 2010, stating that as per the Government orders, a dependent appointed as "Record Clerk" on compassionate grounds is eligible for the appointment as "Junior Assistant", if he was having the qualification for the Post of "Junior Assistant", then he should be considered in the said Post of Junior Assistant.

8.It is further stated that the appointing authorities under no circumstances should appoint a dependent to a lower post when the dependent possess the qualifications required for the post of Junior Assistant/Typist on the ground of non availability of vacancy in the office or department or the dependent not willing to work in other departments.

9.In W.A.Nos.1826 & 1827 of 2011 dated 22.01.2013, this Court passed an order, which reads as under:-

"20. There is no dispute that compassionate appointment is an exception to the normal rule of public appointment. Compassionate appointments are made with a view to help the dependants of the deceased Government servants to tide over temporary difficulties. In order to claim appointment on compassionate basis, there should be a scheme in operation. The availability of the scheme is a condition precedent for making such appointments. The dependants of the deceased Government servants cannot be heard to say that they should be appointed to a particular post with reference to their educational qualification. There should be a specific Regulation giving right to the dependants of the deceased Government servants to apply for a particular post taking into account his/her qualification."

22. The Government appears to have examined the suggestion given by the TNPSC in detail. The Government was of the view that it would be proper and fair to appoint a candidate with reference to the qualification possessed by him and that it would not be administratively expedient to appoint the candidate possessing technical/professional qualifications like B.E., M.B.B.S. Etc., to the post of Junior Assistant. The Government accordingly issued an order in G.O.Ms.No.1119, Labour and Employment Department dated 20 May 1981 permitting appointment of the dependants of the deceased Government servants, who possess the technical and professional qualification, on temporary basis without referring to Employment Exchange to the

initial or starting category of posts for which the qualifications are the minimum prescribed. The Government further directed that such appointees shall apply to the TNPSC in the normal channel and get themselves selected for regular appointment to the post. A comprehensive Government Order was issued on 20 May 1981. It was on the strength of this Government Order, majority of the contesting respondents were appointed on compassionate basis to the post of Assistant Engineer. We are informed that several other dependants of the deceased Government servants, who were in possession of M.B.B.S. Degree were appointed as Assistant Surgeons under the TNPSC. Similarly the dependants of the Government servants, who were in possession of B.Sc. in Agricultural Science were appointed as Deputy Agricultural Officers in Agricultural department."

10. However, the 1st judgment cited supra, is of the year 2010 and the 2nd judgment cited, is of the year 2013 and undoubtedly, certain reliefs were granted in this line by the Courts based on the facts and circumstances of the case. However, the legal principles settled are to be followed by the Courts. Even the Government orders, which all are issued as instructions, if it runs contrary to the Constitutional principles and the settled legal principles, then the same cannot be followed as the Hon'ble Supreme Court of India said that each and every case is to be decided based on the facts and circumstances and the legal principles to be followed in that particular case.

11. The scheme of compassionate appointment is a special scheme. The scheme is an exception. Thus, the same cannot be claimed as a matter of right. The scheme being a special one, undoubtedly, is to be implemented in a restricted manner, so as to avoid discrimination as well as the violation of the equality clause enunciated in the Constitution. Equal opportunity in public employment is the Constitutional mandate. All Recruitments are to be made only by following the recruitment rules under the Constitutional schemes. By expanding the scope of such special schemes, the Constitutional rights of all other eligible persons, who all are aspiring to secure public employment through open competitive process, are infringed. Thus, the "State" must be cautious in enlarging the scope of such special schemes as the same is in violation of Articles 14 and 16 of the Constitution of India. Any such special scheme, if it is enlarged and expanded, the scope of open competitive process will be restricted. In such an event, equal opportunity to be provided under the Constitution will be defeated. Thus, the Government instructions / circulars running contrary to the

Constitutional principles cannot have any legal sanctity and based on such instructions, or circulars, no relief can be granted by the Constitutional Courts. Even, such instructions are placed before the Court, the same is to be tested under the principles enunciated as well as the scope of the scheme. Undoubtedly, the purpose and object of the scheme is to mitigate the circumstances arising on account of the sudden death of a Government servant. Thus, the appointment on compassionate grounds are to be provided within a reasonable period of time and certainly not after a lapse of many years. The scheme of compassionate appointment has got a definite purpose. It is not as if, one employment to be provided to the legal heir of the deceased employee. That is not the object of the scheme. When the scheme itself has got certain purposes and meaning, the scope of the scheme can never be enlarged by the Courts nor by the Executives concerned. Certain cases earlier decided based on certain facts and circumstances, need not be followed and the legal principles now settled by the Hon'ble Supreme Court of India for the purpose of deciding all such cases. Even recently, the Hon'ble Supreme Court of India in the in the case of Government of India, Vs. P.Venkatesh in Civil Appeal No.2425/2019 dated 01.03.2019, held as follows:-

"The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected on 3 January 1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then re-consider the representations for compassionate appointment. After the Union Ministry of 4 Information and Broadcasting rejected the representation on 13 November 2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy

disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9 August 2016, nearly twenty one years had elapsed since the date of the death of the employee.

In Umesh Kumar Nagpal Vs. State of Haryana, this Court held thus:

"2...The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, 5 (1994) 4 SCC 138 5 mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

Bearing in mind the above principles, this Court held:

"6. For these very reasons, the 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 future. 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 and after the crisis is over."

The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the High Court is

unsustainable.

We accordingly allow the appeal and set aside the impugned judgment and order of the High Court. In consequence, we affirm the judgment of the Tribunal dismissing the Original Application. There shall be no order as to costs."

12.The Hon'ble Supreme Court of India has dealt with these aspects by stating that the compassionate appointment cannot be provided after a lapse of many years. This apart, the Hon'ble Supreme Court of India dealt with the growing concept of dispose of the representation in the above cited judgment, which held as follows:

"This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute."

13.Such a practice of entertaining the representations after a lapse of many years are also discouraged by the Hon'ble Supreme Court of India in the said judgment. It is not as if, the writ petitioner can restore the cause of action, which was aroused on account of the death of his father during the year 2008 and he was already provided with an opportunity of appointment in the very same year and he serving in the Post of Sweeper for the past about 10 years.

14.The writ petitioner accepted the terms and conditions of appointment and in service for about 10 years. After 10 years, now he claims by filing the present writ petition that he must be appointed to the Post of Junior Assistant. Even the claim of the writ petitioner for promotion cannot be considered as the promotions are to be given strictly in accordance with the Promotion Rules and by following the seniority. All eligible persons, who all are working in the Group IV Cadre, must be considered for promotion in accordance with their seniority, qualifications and as per the rules in force.

15.This being the principles to be followed, the submission of the writ petitioner that he had submitted representation for about 10 years cannot be accepted. The writ petitioner had accepted the terms and conditions of appointment and his initial

appointment was made on compassionate grounds, the writ petitioner cannot claim appointment or promotion on compassionate grounds now after a lapse of about 10 years from the date of his joining in the Group IV Post. The writ petitioner cannot be allowed to make such a claim now after a lapse of many years and he has to secure promotion in accordance with the rules or if he is willing to secure higher post, he has to participate in the process of selection, if any Recruitment Notification is issued for direct recruitment. Contrarily, he cannot file a writ petition and secure promotion or appointment by citing that his appointment ought to have been provided in the higher post in the first instance and if such claims are entertained, then all such similarly placed persons, who all are appointed on compassionate grounds, will claim that they may also to be appointed considered for the higher post, which may not be possible. The Scheme of compassionate appointment is to be implemented with reference to the availability of the vacancies and as per the quota fixed for compassionate appointment. If those aspects are violated, then the equality clause enunciated in the Constitution is also valid. The equal opportunity to all the eligible persons, are infringed.

16. Thus, this Court is of an opinion that the "State" must also be cautious that once a person is appointed on compassionate grounds, then his application for higher post on compassionate ground can never be considered and the very purpose of compassionate appointment is to mitigate the circumstances and once, it is mitigated, there cannot be any further consideration on compassionate grounds. This being the principles to be followed, the writ petitioner has to secure promotion or appointment by participating in the selection process or by way of promotion as per the Rules.

17. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs.

सत्यमेव जयते Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Government
Municipal Administration and Water Supply
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2.The Secretary,
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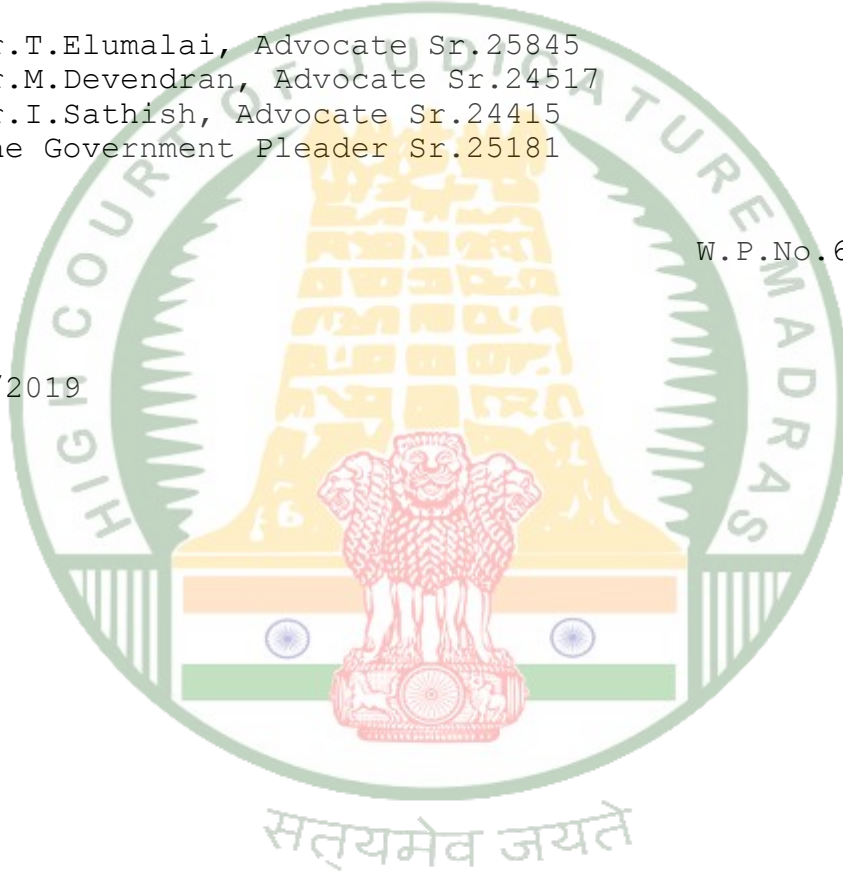
3.The Director of Town Panchayats
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4.The District Collector,
Villupuram District.

+1cc to Mr.T.Elumalai, Advocate Sr.25845
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+1cc to Mr.I.Sathish, Advocate Sr.24415
+1cc to the Government Pleader Sr.25181

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