

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.03.2019

CORAM

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

W.P.No.5673 of 2019

C.Mahendiran

..Petitioner

vs

1.The Chairman,
Chennai Port Trust, Rajaji Salai
Chennai - 600 001.

2.The Chief Mechanical Engineer M.&E.E.Dept.,
Chennai Port Trust, Rajaji Salai
Chennai - 600 001.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st Respondent to consider and pass order on the petitioner representation dated 17.11.2018.

For Petitioner : Mr.K.Balasubramanian

For Respondents : Mr.S.Hajamohideen Gisthi

O R D E R

The relief sought for in the present writ petition is for a direction to direct the 1st Respondent to consider and pass order on the petitioner representation dated 17.11.2018.

2.The learned counsel for the writ petitioner states that on informations, he found that there is no complaint against the writ petitioner. However, a charge memo has been issued. If at all, a charge memo has been issued, the writ petitioner has to face the enquiry for the purpose of establishing his innocence or otherwise. The writ petitioner has not challenged the charge memo nor raised any other question in respect of the enquiry to be conducted. However, the learned counsel for the writ petitioner states that he submitted a representation to drop the charges and the said representation is to be considered by the respondents.

3.At the outset, it is contended that the representation

already given by the writ petitioner is to be considered by the competent authority and the same must be disposed of.

4. This Court is of the considered opinion that even to issue a direction to consider the representation, the writ petitioner has to establish a legal right. In the absence of any such legal right, no such direction can be issued to consider the representation. Even recently, the Hon'ble Supreme Court of India in the case of 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 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 Haryana⁵, 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."

5. In view of the fact that mere submission of the representation to drop the charges, would not confer any right on the writ petitioner to move a writ petition under Article 226 of the Constitution of India. It is a pre-condition that the

person, who approached the Court, must establish a legal right. Thus, the relief as such sought for in the present writ petition is misconceived and the same cannot be granted.

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

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Kak

To

1. The Chairman,
Chennai Port Trust, Rajaji Salai
Chennai - 600 001.

2. The Chief Mechanical Engineer M.&E.E. Dept.,
Chennai Port Trust, Rajaji Salai
Chennai - 600 001.

+1cc to Mr.K.Balasubramanian, Advocate, S.R.No. 22554

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No. 22820

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BR(CO)
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