

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.03.2019

Delivered on: 18.03.2019

C O R A M

The Honourable Mr. Justice M.VENUGOPAL
and
The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.25302 of 2016
and
WMP.No.21645 of 2016

M.Malarkodi

... Petitioner

Vs

- 1.The Employees' State Insurance Corporation,
(To be represented by the Regional Director),
ESI Corporation, Regional Office,
143, Sterling Road, Chennai-600 034.
- 2.The Director General,
ESI Corporation, Headquarters Office,
C.I.G. Marg, New Delhi-110 002.
- 3.The Director,
Sub-Regional Office, E.S.I. Corporation
2nd West Street, K.K.Nagar, Madurai-625 020.
- 4.The Union of India,
Represented by its Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhavan, New Delhi-110 001.
- 5.P.Dhanalakshmi
- 6.Central Administrative Tribunal-Madras Branch
Represented by it's Registrar,
Chennai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari and Mandamus calling for the relevant records of the impugned proceedings pertaining to issue of the Common Order dated 05.01.2016 in

O.A.No.310/00034 of 2015 and M.A.No.767 of 2013 by the 6th Respondent and quash the same as arbitrary, discriminatory, unreasonable, violation of Rule of Law, denial of equality of opportunity, abuse of statutory powers by the 1st and 2nd Respondents, denial of equal treatment under similar circumstances as well as in gross violation of Fundamental Rights guaranteed under Article 14 of the Constitution by way of granting the relief sought in the Original Application before the 6th Respondent and consequently directing the first and second Respondents to appoint Mr.Tamilarasan, son of the Petitioner on compassionate grounds in any entry cadre as deemed fit in the Respondent organization with effect from 31.12.2006 together with consequential benefits.

For Petitioner : Mr.Irudayam

For Respondents : Mr.C.V.Ramachandra Murthy
for R1 to R4
R5- No appearance
R6 - Tribunal

O R D E R

SENTHILKUMAR RAMAMOORTHY.J.,

This Writ Petition has been filed seeking for a Writ of Certiorari cum Mandamus to call for the records of the proceedings pertaining to the common order dated 05.01.2016 in O.A.No.310 /00034 of 2015 and M.A.No.767 of 2013 passed by the Sixth Respondent, quash the same and consequently direct the First and Second Respondents to appoint Mr.Tamilarasan, son of the Petitioner, on compassionate grounds in any entry cadre in the Respondent Organization with effect from 31.12.2003 together with consequential benefits.

2. The husband of the Petitioner was employed as a Lower Division Clerk in the Branch Office of the First Respondent at Palanganatham, Madurai. While in service, he died on 22.11.2003 due to a heart-attack. He is survived by the Petitioner and two children, viz., his son, M.Tamilarasan and daughter M.Kalaiyarasi. The son was 19 years old at the time of demise of his father and was a First Year B.E. Student.

3. The Petitioner applied for compassionate appointment in the First Respondent after the death of her husband. Based on the application of the Petitioner, by letter dated 14.07.2004, the Regional Office of the First Respondent recommended that compassionate appointment be given to the Petitioner. Accordingly, the application for compassionate appointment was placed before the Committee for Review of Cases for

Compassionate Appointments (the Committee) at the meeting held on 23.03.2005, wherein several cases including that of the Petitioner were kept pending on account of non-availability of vacancies. This position continued through the Committee Meetings on 03.06.2005, 27.07.2005, 18.11.2005, 08.03.2006 and 25.05.2006. Eventually, at the meeting held on 08.12.2006, the Committee recommended that the Petitioner's application be closed as being time barred and also on account of non-availability of vacancy.

4. By letter dated 16.03.2007, the Regional Office of the First Respondent communicated to the Petitioner that her application for compassionate appointment was examined by the Committee and the application was recommended to be closed due to non-availability of vacancy. Another communication dated 25.06.2007 was also sent to the Petitioner reiterating that her application for compassionate appointment was recommended to be closed due to non-availability of vacancy. Thereafter, the Petitioner made repeated representations requesting compassionate appointment on 18.11.2009 and 05.10.2010. Finally, by response dated 21.09.2011 to the Petitioner's fresh application dated 16.06.2011, the Joint Director of the First Respondent informed the Petitioner that an application for compassionate appointment cannot be considered after three years. This letter also referred specifically to previous Committee Meetings, including the Meeting held on 08.12.2006 wherein the Petitioner's application was recommended for closure.

5. Much later, on 25.10.2013, the Petitioner filed an Original Application No.35 of 2015 before the Sixth Respondent herein. This application was opposed on the ground that there was considerable delay in making the application and, therefore, the application is liable to be dismissed. By impugned order dated 05.01.2016, the Sixth Respondent held that the Applicant/Petitioner had been informed of the closure of her case by letter dated 16.03.2007. Consequently, the Applicant/Petitioner herein should have assailed the said order before the Sixth Respondent but, instead, made repeated representations to the First Respondent. The Sixth Respondent categorically held that the repeated representations did not provide fresh cause of action to the Applicant/Petitioner. Moreover, the Sixth Respondent specifically adverted to the fact that the Applicant/Petitioner herein is a pensioner drawing a pension of Rs.7,000/- per month and her son is earning Rs.6,000/- per month. Therefore, according to the Sixth Respondent, it cannot be said that the family of the Applicant/Petitioner herein is in a penurious condition. Hence, the Sixth Respondent rejected the application as being hopelessly barred by limitation because the delay of about seven years was not properly explained.

6.The above mentioned order dated 05.01.2017 is the impugned order in this writ petition. The learned counsel for the Petitioner contended that the Petitioner cannot be penalised on account of failure of the First Respondent to consider the application of the Petitioner at meetings of the Committee for Compassionate Appointments. He adverted to the fact that the application of the Petitioner was tabled for consideration at several meetings of the Committee but was not taken up due to non-availability of vacancies. He further contended that he has produced evidence regarding the availability of vacancies and that repeated representations were made because vacancies were available. He also invited the attention of this Court to the letter dated 15.04.2010 from the First Respondent to the Secretary, Ministry of Labour and Employment, wherein a request was made to relax the rules for compassionate appointments in respect of 19 cases, including that of the Petitioner that were closed with effect from 01.01.2000 on account of non-availability of vacancies. He also invited the attention of this Court to the application for condonation of the delay of 776 days [M.A.No.767 of 2013] and contended that this was rejected by the Sixth Respondent without due consideration. He also contended that the cases of other persons who were similarly situated, such as the Fifth Respondent, were considered favourably but the case of the Petitioner was unfairly rejected.

7.The learned counsel for the Petitioner relied upon the Judgment of the Hon'ble Supreme Court in CANARA BANK AND ANOTHER Vs. M.MAHESH KUMAR reported in (1994) 4 SCC 138 (the Canara Bank case) wherein, the Hon'ble Supreme Court has referred to the law on compassionate appointment extensively in para 12. The learned counsel for the Petitioner also relied upon the following judgments/orders:

(i) Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) By LRs. and Ors in (2009) 3 L.W. 528.

(ii) A.Neppolian Vs. The Chief Engineer (Personnel), The Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai - 600 002 and another in W.P.No.19914 of 2004.

(iii) M.Uma Vs. The Chief Engineer (Personnel), The Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai - 600 002 and another in W.P.No.4050 of 2006.

(iv) G.Mallika Vs. The Secretary to Government, Agriculture Department, Fort St. George, Chennai-9 and others in W.P.No.21888 of 2010.

8.In response, the learned counsel for the Respondents submitted that the prayer in O.A.No.34 of 2015 itself shows that the Petitioner was challenging the rejection order dated 06.03.2007 and not merely the rejection order dated 21.09.2011.

He also pointed out that the application for compassionate appointment was submitted to the First Respondent by the Petitioner herein but that in O.A.No.34 of 2015, the Petitioner had prayed for the compassionate appointment of the Applicant or preferably her son Mr.Tamilarasan. He further pointed out that in the writ petition before this Court the prayer is for the appointment of the son of the Petitioner and not the Petitioner. Accordingly, he contended that the writ petition is not maintainable.

9.In response to the contention that the application for compassionate appointment was rejected on 21.09.2011 and not earlier, he submitted that the letter dated 21.09.2011 clearly states that the application was tabled at meetings held on 26.08.2004, 23.03.2005, 03.06.2005, 27.07.2005, 18.11.2005, 08.06.2006, 25.05.2006 and 08.12.2006 but could not be considered owing to non-availability of vacancies. He further stated that the said letter makes it clear that a person's name would be considered for compassionate appointments for a maximum period of three years and, thereafter, the case would be closed finally and not considered. Therefore, he submitted that the letter dated 21.09.2011 merely reiterates what was communicated earlier on 16.03.2007 and, consequently, did not give rise to a fresh cause of action.

10.In support of his submissions, the learned counsel for the Respondents referred to and relied upon four judgments of the Hon'ble Supreme Court and this Court. In UNION OF INDIA VS. BHAGWAN SINGH [(1995) 6 SCC 476], the Hon'ble Supreme Court held in paragraph-7 that the purpose of compassionate appointment is to provide immediate financial assistance to the family of a Government Servant who died in harness. In the said paragraph, the Supreme Court referred to another judgment in OMESH KUMAR NAGPAL V. STATE OF HARYANA [1994 4 SCC 138], wherein it was held inter alia, as follows:

"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, 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."

Likewise, in DHALLA RAM VS. UNION OF INDIA [(1997) 11 SCC 201, the Supreme Court held that the application filed before the Central Administrative Tribunal after a delay of five years cannot be entertained because compassionate appointment is not a method of recruitment, but is a facility to provide for immediate rehabilitation of the family in distress. In fact, in MAHENDRA SINGH VS. UNION OF INDIA in W.P.(C).No.7142 of 2009 dated 15.09.2010, a Division Bench of the Hon'ble Delhi High Court held that a petition filed before the Central Administrative Tribunal after the lapse of seven years would be barred by limitation in view of Section 21 of the Central Administrative Tribunals Act.

11.The last judgment that was relied upon by the learned counsel for the Respondents is a Division Bench judgment of this Court in P.RAGHUPATHY V. THE CHAIRMAN, POSTAL SERVICES BOARD AND FIVE OTHERS in W.P.No.27082 of 2016, wherein the Division Bench referred to the decisions of the Supreme Court wherein it was held that appointment on compassionate grounds is not another source of recruitment and it cannot be claimed as a matter of right. In the said Division Bench judgment, the order dated 07.04.2004 rejecting the application for compassionate appointment was challenged before the Central Administrative Tribunal in the year 2013 and the Court held that the said application is time barred as per Section 21 of the Central Administrative Tribunal Act, 1985.

12.This Court has carefully considered the affidavit, counter affidavit, documents on record and the rival submissions of both sides.

13.As rightly contended by the learned counsel for the Respondents, compassionate appointment is not another source of recruitment and it is an exception to provide immediate succour to the family of the deceased employee who died in harness. The decisions of the Hon'ble Supreme Court and the Division Bench of this Court, which were adverted to above, would squarely apply to the facts of the instant case. Equally, the judgment of the Hon'ble Supreme Court in the Canara Bank Case, which was cited by the learned counsel for the Petitioner also holds categorically that an application for compassionate appointment should be made without delay and is intended to meet the sudden crisis occurring on account of the death of the breadwinner in service. The judgment of the Hon'ble Supreme Court, which is reported in 2009-3-L.W.528 and is relied upon by the learned counsel for the Petitioner, is on the interpretation of Section 5 of the Limitation Act, 1963. However, the instant case should

be examined keeping in mind the object, purpose and the law on compassionate appointment. The Orders of this Court, cited in para 7 supra and relied upon by the learned counsel for the petitioner, should be viewed in the context of the binding Supreme Court judgments to the contrary. Needless to say, as per Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all Courts.

14. The application of the Petitioner for compassionate appointment was rejected and the fact of rejection was clearly communicated to the Petitioner by letter dated 06.03.2007. The repeated representations thereafter and the reiteration of the rejection by letter dated 21.09.2011 do not give rise to a fresh cause of action. In this regard, it is pertinent to refer to a recent judgment of the Hon'ble Supreme Court in THE GOVERNMENT OF INDIA Vs. P.VENKATESH in Civil Appeal No.2425 of 2019 (yet to be reported), wherein it was held as follows:-

"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."

15. Accordingly, there are no infirmities in the order of the Sixth Respondent whereby O.A.No.34 of 2015 was rejected. In this connection, it is also relevant to state that this Court does not sit in appeal over the decisions of the Sixth Respondent and exercises supervisory jurisdiction by interfering if there are patent errors in the decision of the Tribunal. The impugned order does not disclose any such patent error. Therefore, the writ petition is dismissed and there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Employees' State Insurance Corporation,
(To be represented by the Regional Director),
ESI Corporation, Regional Office,
143, Sterling Road, Chennai-600 034.
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Represented by its Secretary,
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- 5.Central Administrative Tribunal-Madras Branch
Represented by it's Registrar, Chennai.

+1cc to Mr.C.V.Ramachandramurthy, Advocate sr.25561
+1cc to Mr.A.Irudayan, Advocate Sr.26040

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srg 10/04/2019

सत्यमेव जयते

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