

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.22512 of 2019

B.Stanis

... Petitioner

Vs.

1. The Secretary to Government
Transport Corporation Department
Fort St. George
Chennai-600 009.

2. The Managing Director
Chennai City Transport Corporation
Pallavan Salai
Chennai-600 002.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to give compassionate ground appointment in favour of the petitioner.

For Petitioner : Mr.S.Xavier Felix

For R1 : Ms.M.Lalitha
Government Advocate

For R2 : Mr.R.Annamalai

ORDER

Writ petition is filed for issuance of Writ of Mandamus directing the respondents 1 and 2 to give compassionate ground appointment in favour of the petitioner.

2.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

3.The case of the petitioner is that his father was working as a driver in Poonamallee depot and while he was in service, died on 31.07.2002. At the time of his father's death, since the petitioner was a minor, he was not able to make an application for compassionate appointment before the authority concerned. The petitioner on attaining majority, has made a representation dated 18.08.2018 for compassionate appointment to the respondents. Till date, the petitioner's application was not considered. Hence, this writ petition.

4.Learned counsel for the petitioner submitted that though the petitioner has made the application for compassionate appointment belatedly, there will be no impediment on the part of the respondents to entertain the belated application. The very same issue was considered by the Division Bench of this Court by judgment dated 15.09.2017 made in W.A.No.205 of 2017 and directed the respondents to consider the representation of the petitioner claiming compassionate appointment. He further submitted that this Court may issue a direction to the respondents to consider the representation of the petitioner for compassionate appointment.

5.Learned Government Advocate appearing for the respondents submitted that the petitioner's father died on 31.07.2002. As per the existing scheme, the petitioner has to make an application for compassionate appointment within a period of three years from the date of death of his father. Making application beyond three years is not permissible on the ground of delay. Therefore, he prays for dismissal of the writ petition.

6.It is admitted fact that the petitioner's father died while he was in service as driver in the year 2002. At the relevant point of time, the petitioner was a minor and he did not possess qualification. After attaining majority, he made a representation dated 18.08.2018 for compassionate appointment to the respondents. The said representation was not considered. Hence, the petitioner approached this Court. Considering the submission made by the learned Government Advocate, the period for making application for compassionate appointment is within a period of three years from the date of death of the employee. Admittedly, the petitioner made application after 16 years of his father's death.

7.The very same issue was considered by the Hon'ble Division Bench of this Court in the decision reported in 2006 (3) L.L.N.407 [State of Tamil Nadu (represented by Secretary to Government, Rural Development Department), Chennai and others Vs. G.Madheshwaran and another] and the relevant paragraph is extracted hereunder:

"10. The question relating to compassionate appointment has been considered by the Supreme Court in several cases. In 1994 (2) L.L.N. 420, Umesh Kumar Nagpal v. State of Haryana it was observed, in Para. 2, at page 421:

"... Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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 a job is to be offered to the eligible member of the family..."

11. In 1998 (3) L.L.N. 47 (Director of Education (Secondary) v. Pushpendra Kumar), it was observed, in Para. 8, at page 52:

"... In Umesh Kumar Nagpal v. State of Haryana, [1994 (2) L.L.N. 420] (vide supra), this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that 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."

12. In 1999 (4) L.L.N. 80 (State of Uttar Pradesh v. Paras Nath), it was observed, in Paras. 5 to 7, at page 81:

"5. . . The purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one judgment of this Court in the case of Union of India v. Bhagwan Singh, [1996 (1) L.L.N. 577]. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This Court observed, in Para. 7, at page 579:

"... The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a Government servant who dies in harness, when there is no other earning member in the family..."

7. No such consideration would normally operate seventeen years after the death of the Government servant. The High Court was, therefore, not right in granting any relief to the respondents."

13. In the present case, the application for appointment under compassionate grounds has been filed after 24 years. The widow of the employee who died in harness has not opted for such appointment. The reason given by the Collector is also in line with the various decisions of the Apex Court referred to above.

14. The object behind compassionate appointment has been in no uncertain terms explained by the various judgments of the Supreme Court referred to above, namely the purpose of such appointment is to provide financial assistance to the family of the deceased Government servant at the time of his death in indigent circumstances. As observed by the Apex Court, such consideration will not arise if the claim is made after a long period of time. In this case, it is after 24 years. The object behind the compassionate appointment would be lost if the legal heirs of the deceased employee are allowed to seek compassionate appointment at any length of time. Only in such view of the matter, the Government in the year 1995, clarified that the application for compassionate appointment should be made within a period of three years from the date of the employee dying in harness. Therefore, the benevolent provision of the compassionate appointment cannot be said to be made applicable without any time-limit."

8. From the above decision, it is clear that the purpose of compassionate appointment is to provide financial assistance to the family of the deceased Government servant at the time of his death in indigent circumstances. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. In the present case, the petitioner made representation after a lapse of 16 years. Hence, there is no justification in issuing direction to the respondents to consider the petitioner's representation and it would be contrary to the decision cited supra. Hence, this Court is not inclined to grant the relief sought for by the petitioner.

9. The writ petition deserves to be dismissed and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Transport Corporation Department
Fort St. George
Chennai-600 009.
2. The Managing Director
Chennai City Transport Corporation
Pallavan Salai
Chennai-600 002.

+1cc to Mr.R.Annamalai, Advocate, S.R.No.92986
+1cc to the Government Pleader, S.R.No.93399

W.P.No.22512 of 2019

RGN(CO)
CS/21/01/2020



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