

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.10.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.18362 of 2019

D. Dinesh

..Petitioner

vs

1. The State of Tamilnadu
represented by its Secretary to Government
Labour & Employment Department,
Secretariat,
Chennai- 9.

2. The Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028.

3. The District Registrar (Admn),
(Assistant IG of Registration Cadre)
District Registrar Office,
Erode - 3.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a writ, order or
direction specifically writ in the nature of Writ of Mandamus
directing the respondents to consider the petitioner for
compassionate appointment in the place of his father late V.C.
Dhanpal who died in harness on 28.03.2008, by considering the
applications dated 24.08.2009 and 20.05.2013 and the
representations dated 19.05.2014, 23.12.2014, 12.06.2015,
19.02.2019 and 20.06.2019.

For Petitioner : Mr. N. Manokaran

For Respondents : Mr. T.M. Pappiah

Spl GP

O R D E R

The petitioner filed this Writ Petition seeking direction to
the respondents to consider the petitioner for compassionate
appointment in the place of his father late V.C. Dhanpal who
died in harness on 28.03.2008, by considering the applications
dated 24.08.2009 and 20.05.2013 and the representations dated
19.05.2014, 23.12.2014, 12.06.2015, 19.02.2019 and 20.06.2019.

2. The case of the petitioner is that the petitioner's father V.C. Dhanapal was working as a Junior Assistant in the Sub Registrar's Office, Ammapet and died in harness on 28.03.2008. His father died leaving behind the petitioner, his mother Poongodi and two sons namely D.Dinesh and D.Rohit as his legal heirs. At the time of the death of the petitioner's father, the petitioner and his brother were minors. Therefore, his mother has submitted an application dated 24.08.2009 before the 3rd respondent for compassionate appointment. The said application dated 24.08.2009 was forwarded to the 2nd respondent who in turn sent a communication dated 05.07.2010 to the 3rd respondent. However, the 3rd respondent had expressed disinclination to consider the application on the ground that the petitioner was a minor, aged about 15 years, at the time of the first application. After attaining the age of majority, the petitioner's mother has resubmitted the application dated 20.05.2013 to the 3rd respondent seeking appointment for the petitioner on compassionate ground. The petitioner has submitted one more petition dated 23.12.2014 followed by the reminder representation dated 12.06.2015 and 19.02.2019. Petitioner's applications dated 19.02.2019 and 22.02.2019 addressed to the 3rd respondent were also forwarded to the 2nd respondent, after referring his earlier petitions dated 20.05.2013 and 19.05.2014. All his applications and representations are pending consideration before the 2nd respondent. In fact, the petitioner has sent a reminder petition dated 20.06.2019 by reiterating his grievance ventilated in the above mentioned representations. Due to inaction on the part of the respondents, the petitioner files the Writ Petition.

The learned counsel for the petitioner would submit that it would be suffice to issue direction to the second respondent to consider the representations dated 19.02.2019, 22.2.2019 followed by the reminder dated 20.06.2019 together with the earlier Applications dated 20.05.2013 and 19.05.2014 and pass orders on merits and in accordance with law.

Mr.T.M.Pappiah, learned Special Government Pleader, submits that compassionate appointment was rejected on 20.07.2010 and without challenging the rejection order, filing another application is unsustainable one. In support of his contention, he relied upon the Judgment of this Court dated 04.09.2019 in W.P.No.26872 of 2018. The relevant paragraphs are extracted hereunder:

" 45. In Sanjay Kumar Vs. State of Bihar ((2000) 7 SCC 192), wherein the Hon'ble

Supreme Court, in paragraph-3 of its judgment, held as under:-

" We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education V. Pushpendra Kumar (supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

46. In Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138), the Hon'ble Supreme Court, in paragraph 6 of its judgment, held as under:-

"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 crises is over."

47. In State of Manipur V. Md. Rajaodin ((2003) 7 SCC 511), wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain V. Union of India (1989) 4 SCC 468) it was observed that in all claims of appointments on compassionate

grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in Phoolwati (Smt.) V. Union of India 1991 Supp (2) SCC 689 and Union of India V. Bhagwan Singh ((1995) 6 SCC 476). In Director of Education (Secondary) v. Pushpendra Kumar ((1998) 5 SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends, meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception and there nullity the main provision by taking away completely the right conferred by the main provisions."

48. In Steel Authority of India Limited V. Madhusudan Das ((2008) 15 SCC 560), wherein the Hon'ble Supreme Court, in paragraph 15 of its judgment, held as under:-

" This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor,

viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. [See General Manager, State Bank of India V. Anju Jain (2008) 8 SCC 475, para 33]"

49. In MGB Gramin Bank V. Chakrawarti Singh ((2014) 13 SCC 583), the Hon'ble Supreme Court, in paragraphs 6,7,8,9,10,11,12,13,14 and 15 of its Judgment, held as under:-

" 6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception, by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crises, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for

years.

In view of the above decision of the Hon'ble Division Bench of this Court, if the first application made by the petitioner could not be considered for compassionate appointment, because he was a minor at that time, his subsequent application, submitted after attaining majority, after a considerable length of period, could not be considered, as there cannot be reservation of a vacancy till such time the petitioner becomes major, unless there is some specific provision.

In the present case, the application of the petitioner was rejected on 20.07.2010 as he was not eligible for compassionate appointment being a minor of 15 years at that time and this order was not subjected to challenge. Further, after attaining the age of majority, the claim for compassionate appointment is not permissible as there is no proof to show that the petitioner's family is under continuous distress circumstances after a lapse of a long period the Hon'ble Supreme Court has further observed that while considering compassionate appointment care has to be taken that such provision does not unduly interfere with the right of those other persons who are eligible for appointment to such a post fallen vacant.

In view of the above circumstances, following the various decisions of the Hon'ble Supreme Court and the Division Bench of this Court the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Secretary to Government
State of Tamilnadu
Labour & Employment Department,
Secretariat, Chennai- 9. सत्यमेव जयते

2. The Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028.

3. The District Registrar (Admn),
(Assistant IG of Registration Cadre)
District Registrar Office, Erode - 3.
+lcc to Mr.N.Manokaran , Advocate SR.No. 89303
+1 cc to Government Pleader Sr.No. 89697

W.P.No.18362 of 2019

A.SK(19/02/2020)