

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.Nos.774 & 775 of 2017
&
C.M.P.Nos.10809 & 10810 of 2017

W.A.No.774 of 2017

1. The Commissioner
Marakannam Panchayat Union
Marakkanam, Villupuram District
2. The Block Development Officer
Marakkanam
Villupuram District .. Appellants / Respondents 3 & 4

-vs-

1. D.Saravanan .. 1st Respondent / Petitioner
2. The State of Tamil Nadu
Rep., by its Secretary to Government
Rural Development Department
Fort., St.George, Chennai - 600 009.
3. The District Collector
Villupuram District
Villupuram .. Respondents / Respondents 1 & 2

W.A.No.775 of 2017

1. The State of Tamil Nadu,
Rep., by its Secretary to Government,
Rural Development Department,
Fort., St.George, Chennai - 600 009.
- 2.The District Collector,
Villupuram District, .. Appellants / Respondents 1 & 2

1. D.Saravanan
2. The Commissioner,
Marakannam Panchayat Union,
Marakkanam, Villupuram District.
3. The Block Development Officer,
Marakkanam Villupuram District. ..Respondents/Respondents 3&4

W.A.No.774 of 2017 filed under Clause 15 of Letter Patent against the order in W.P.No.17751 of 2007 (T) (O.A.No.1981 of 2004) dated 19.11.2014 on the file of the High Court of Judicature at Madras.

W.A.No.775 of 2017 filed under Clause 15 of Letter Patent against the order in W.P.No.17751 of 2007 (T) (O.A.No.1981 of 2004) dated 19.11.2014 on the file of the High Court of Judicature at Madras.

Prayer in W.P.No.17751 of 2007: This petition came to be numbered by transfer of O.A.No.1981 of 2004 from the file of the Tamilnadu Administrative Tribunal, praying for a Writ of Mandamus directing the first respondent to consider the appeal of the petitioner dated 30.06.2003 for reconsidering the order of the rejection order dated 16.06.1999 passed by the 2nd Respondent regarding Compassionate Appointment.

W.A.No.774 of 2017

For Appellants : Mr.P.Chinnadurai

For R1 : Mr.S.N.Ravichandran

For R2 and R3 : Mrs.A.Sri Jeyanthi
Special Government Pleader

W.A.No.775 of 2017

For Appellants : Mrs.A.Sri Jeyanthi
Special Government Pleader

For R1 : Mr.S.N.Ravichandran

For R2 and R3 : Mr.P.Chinnadurai

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by P.T.ASHA,J.]

The Intra-Court appeals W.A.No.774 of 2017 is filed by the 3rd and 4th respondents and W.A.No.775 of 2017 is filed by the 1st and 2nd respondents in the Writ Petition, challenging the order passed in W.P.No.17751 of 2007, in and by which the learned Judge has quashed the order passed by the 2nd respondent rejecting the request made by the Writ petitioner for compassionate appointment by an order dated 16.06.1999 and directing the 1st respondent to consider afresh the representation made by the Writ petitioner dated 30.06.2003. The parties in these appeals are referred to in their same litigative status as in the Writ Petition.

2.The following chronology of dates and events are necessary for disposing of the above Writ Appeals:

- 06.01.1973 - The petitioner's mother, D.Emrose was appointed as a Maternity Assistant in Vaidapakkam Centre
- 15.08.1979 - D.Emrose dies leaving behind her surviving her mother and two sons, her husband having pre-deceased her. (The Writ petitioner was aged 7 years on the date of the death of his mother)
- 21.01.1992 - The Writ petitioner submits an application seeking compassionate appointment.
- 13.11.1998 - The 2nd respondent intimates the Writ petitioner that his name which is in seniority list No.157 would be considered in due course after getting instructions from the Government. Several representations are addressed to the authorities.
- 01.12.1997 - The 2nd respondent addressed a letter to the 1st respondent recommending that the request of the petitioner for compassionate appointment be considered favourably.
- 12.05.1999 - the 1st respondent rejects the request made by the Writ petitioner and forwards the order to the Director Rural Development with a copy marked to the 2nd respondent.
- 16.06.1999 - The rejection order is communicated to the Writ petitioner.
- 21.06.2002 - The Writ petitioner addressed the 2nd respondent requesting him to consider his request for compassionate appointment (there is no mention made about the rejection).
- 30.06.2003 - Similar request was made by the Writ petitioner to the 1st respondent (once again the earlier order of rejection not mentioned).
- 2004 - The Writ petitioner seeks reconsideration of the order of rejection dated 16.06.1999 of the 2nd respondent and directing the 1st respondent to consider the appeal by

filing O.A.No.1981 of 2004 on the file of the Tamil Nadu Administrative Tribunal (The Writ petitioner does not refer to order dated 12.05.1999 passed by the 1st respondent rejecting the request for compassionate appointment which order was communicated to him by the 2nd respondent vide his letter dated 16.06.1999). This application was later transferred to the file of this Court on the abolition of the Tribunal and re-numbered as W.P.No.17751 of 2007 (T).

- 19.11.2014 - Order passed in W.P.No.17751 of 2007 (T). This Court allows the Writ Petition with a direction to the Government to provide compassionate appointment within a period of eight weeks from the date of receipt of the order.
- 10.07.2015 - These Writ Appeals (W.A.Nos.774 and 775 of 2017) were filed.

3.The learned Judge has allowed the petition on the ground that G.O.Ms.No.120, did not prescribe any limitation for making a request for compassionate appointment made prior to 26.06.1995. Considering the fact that the Writ petitioner's request has been made as early as in the year 1992, the learned Judge was of the opinion that he should be given compassionate employment.

4.The learned Government Pleader would submit that the petitioner's mother was not a permanent Government servant drawing salary on a regular time scale and further on the date of the death of the said D.Emrose the Writ petitioner was only seven years old and there is no explanation whatsoever as to why the Writ petitioner had waited for over nineteen years for making his application. The learned Government Pleader would also argue that the Writ petitioner was not in a state of penury, since from the records it is evident that the petitioner had been married and therefore there is a strong presumption that he was gainfully employed. All these factors, according to the learned Government Pleader, has not been considered by the learned single Judge.

5.Mr.S.N.Ravichandran, learned counsel arguing on behalf of the Writ petitioner would submit that the District Collector had recommended that the petitioner should be given compassionate appointment as early as in the year 1998 but however the said proposal has not translated in passing an order for giving compassionate appointment. He would submit that the application for compassionate appointment had been made immediately by the Writ petitioner on attaining the age of majority.

6.From the submissions made by both the counsels and on a perusal of the records it is seen that the Writ petitioner's mother was not a regular employee and within six years of her

appointment she had expired. Though the rejection order had been made as early as in the year 1999 the Writ petitioner has not chosen to question the same till the year 2004 which lends credence to the submission of the Government Pleader that the Writ petitioner was not living in a state of penury and therefore not entitled to compassionate appointment.

7. Further a perusal of the impugned order dated 12.05.1999, would reveal that the request has been rejected by the 1st respondent not only on the ground of delay but also on the ground that the Writ petitioner's mother was not a permanent employee. Though the prayer in the Writ Petition was for a mandamus to the 1st respondent to re-consider the rejection order, the learned Judge has proceeded to issue a positive direction, for granting the compassionate appointment to the Writ petitioner.

8. The Honourable Supreme Court in the Judgement reported in (1994) 4 SCC 138 - Umesh Kumar Nagpal Vs. State of Haryana and others while considering the guidelines that has to be followed while giving appointment in public services on compassionate ground had held that the object of granting compassionate appointment was only to enable the family to tide over a sudden crisis that had occurred on account of a sudden death of the bread winner of the family. The Honourable Supreme Court went on to hold that the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The Honourable Supreme Court had also held that the issue of compassionate appointment is not a vested right and therefore cannot be claimed after a lapse of long period.

9. In a recent Judgement reported in (2019) 3 SCC 653 - State of Himachal Pradesh and another Vs. Shashi Kumar, the Honourable Supreme Court was called upon to consider a policy framed by the Government of Himachal Pradesh for providing employment assistance on compassionate grounds to dependents of Government servants who had died in harness, leaving the family in need of assistance. The Honourable Supreme Court was particularly dealing with the finding of the High court with reference to the following:

a) Whether the amount of family pension and other retiral benefits, received by the family of the deceased employee, can be included in the family income for denying the compassionate appointment?

b) Whether the claim of compassionate appointment can be made after a considerable delay?

10. (A). While answering the first issue, namely the inclusion of the family pension to the family income for denying

compassionate employment, the Honourable Supreme Court had distinguished the decision rendered in (2005) 10 SCC 289 - Govind Prakash Verma Vs. Life Insurance Corporation of India and others, to hold that the family pension received by the dependents had to be taken into account.

10.(B).With reference to the second aspect, namely the delay, the Honourable Supreme Court relying upon the Judgement in Umesh Kumar Nagpal Vs. State of Haryana and others (supra) emphasised that the basis of a claim of compassionate appointment arises out of a need for providing immediate assistance to the family of the deceased employee. In the event of delay this sense of immediacy is lost. Ultimately, the Honourable Supreme Court set aside the order passed by the High Court.

10.(C).While dealing with the issue of delay / lapse of time, the learned Judges had also relied on the earlier Judgement of the Honourable Supreme Court reported in (2006) 5 SCC 766 - State of J and K and others Vs. Sajad Ahmed Mir, where it was held as follows:

"This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution."

10.(D).The Honourable Supreme Court had also relied upon the Judgement reported in (2011) 3 SCC 42 - Local Administration Department and others Vs. M.Selvanayagam, where an earlier Bench of the Honourable Supreme Court had held as follows:

"It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death,

simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the constitution and hence, quite bad and illegal."

11. Therefore considering the fact that the Writ petitioner had first made his application seeking compassionate appointment when he had turned 20 years of age, nearly 13 years after the death of the said D.Emrose and applying the ratio of the Judgement reported in (2019) 3 SCC 653 - State of Himachal Pradesh and another Vs. Shashi Kumar, we are of the opinion that the order passed by the learned Single Judge deserves to be set aside and accordingly the same is set aside.

12. It is seen from the records that the Tamil Nadu Administrative Tribunal by its order dated 19.04.2004 in O.A.No.1632 of 2004 had directed the 2nd respondent to sanction all the terminal benefits to the petitioner and the other legal heirs within a period of three months from the date of receipt of a copy of the order. It is informed that the terminal benefits are yet to be disbursed. The 2nd respondent is directed to forthwith take steps to pay the terminal benefits to the Writ petitioner and his brother who are the legal heirs of the deceased D.Emrose, within a period of two months from the date of receipt of a copy of the Judgement.

The Writ Appeals are disposed of with the above directions. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-V)

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सत्यमेव जयते

Sub Assistant Registrar

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To

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1. The Secretary to Government,
The State of Tamil Nadu,
Rural Development Department,
Fort., St. George, Chennai - 600 009.

2. The District Collector,
Villupuram District,
3. The Commissioner
Marakannam Panchayat Union
Marakkanam, Villupuram District
4. The Block Development Officer
Marakkanam
Villupuram District

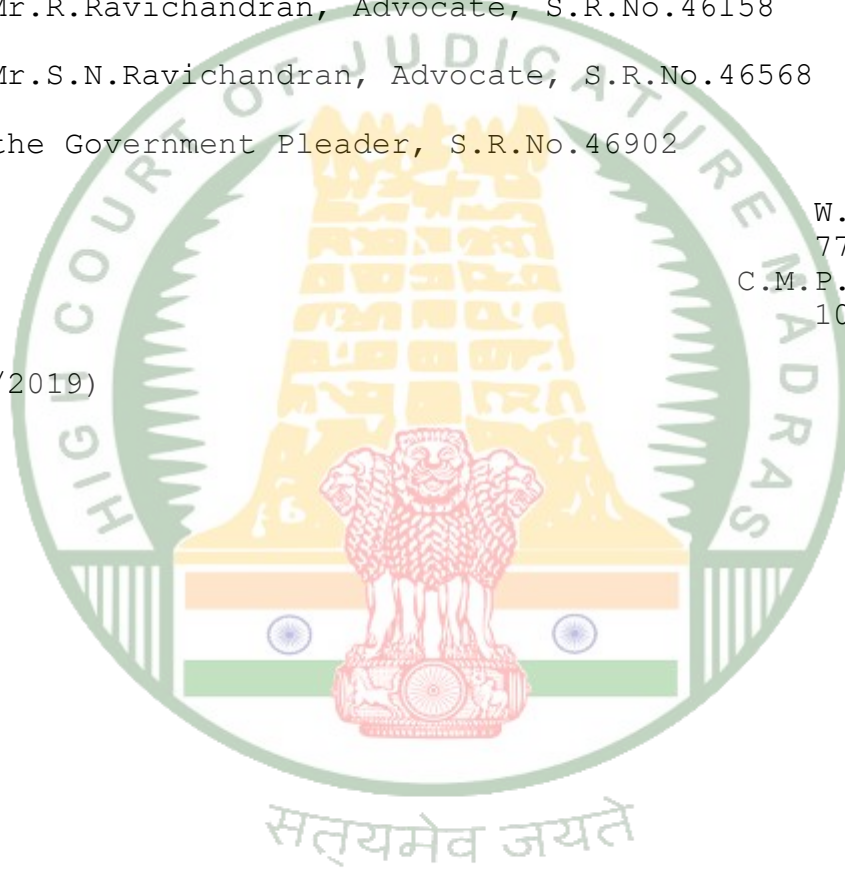
+1 cc to Mr.R.Ravichandran, Advocate, S.R.No.46158

+1 cc to Mr.S.N.Ravichandran, Advocate, S.R.No.46568

+1 cc to the Government Pleader, S.R.No.46902

SKV(CO)
SSM(24/07/2019)

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10810 of 2017



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