

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.29524 of 2019

Deepa

.. Petitioner

Vs.

1.The District Collector,
Thiruvarur District,
Thiruvarur

2.The District Elementary School Education Officer,
Thiruvarur District,
Thiruvarur

3.The Assistant Elementary School Education Officer,
Thiruvarur District,
Thiruvarur.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent herein to dispose of the representation dated 02.03.2013, within the stipulated period as prescribed by this Court.

For Petitioner .. Mr.A.Kumhararaja

For Respondents.. Mr.R.S.Selvam for R1

Mr.C.Munusamy, Spl.G.P. for R2 & 3

ORDER

This writ petition has been filed seeking for issuance of a Mandamus to direct the second respondent herein to dispose of the representation dated 02.03.2013, within the stipulated period as prescribed by this Court.

2.According to the petitioner, her father late. Keethivasan, who was working as middle school teacher, died in harness on 19.04.1987 leaving his wife, two daughters, viz., the petitioner and one Sundari. Subsequently, before her

marriage, Sundari, applied for appointment on compassionate ground. Later, she got married and also withdrew her application for compassionate appointment. Therefore, the petitioner's mother suggested the petitioner to apply for compassionate appointment to sustain the family. Accordingly, the petitioner made a representation on 05.11.2008 seeking appointment on compassionate ground. However, there was no response from the respondents and again the petitioner, made another representation on 02.03.2013. Even then also as there was no response from the respondents, the petitioner was constrained to approach this Court by filing the present writ petition.

3. Learned counsel appearing for the petitioner would submit that immediately after the death of the employee, a representation was made for compassionate appointment by the sister of the petitioner, however, later on her marriage and on her withdrawal of the application, the petitioner made a representation for compassionate appointment, but despite representations, the respondents have not considered the claim of the petitioner.

4. Learned Special Government Pleader appearing for the respondents would submit that the employee died on 19.04.1987 and there was no representation made claiming compassionate appointment within a period of three years from the date of death of the employee. He would point out that there was a huge delay in making representation claiming for compassionate appointment that too after a period of 22 years which cannot be entertained and the present writ petition is filed after 11 years thereafter, which is liable to be dismissed.

5. The very purpose and the object of the scheme of appointment on compassionate grounds is to mitigate the circumstances arising on account of sudden death of the Government employee. It is pertinent to note that even after demise of the employee the family has been sustained from all these years and it cannot be construed that the family was in indigent circumstances so as to provide employment to one of the members of the family. In this case, it appears that claiming compassionate appointment, the petitioner made a representation on 05.11.2008 i.e., after a period of 21 years and the present writ petition has been filed 11 years thereafter. Therefore, there is a considerable delay in claiming the appointment on compassionate ground, and therefore, it has to be construed that the family of the deceased employee has not been under indigent circumstances so as to provide compassionate appointment. In fact, the compassionate

employment cannot be granted after a lapse of reasonable period.

6. In Umesh Kumar Nagpal vs. State of Haryana and Others {(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 bread winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.?

7. In State of Manipur vs. 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 and others vs. Union of India and others (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 reiterated in Phoolwati (Smt.) vs. Union of India and others (1991) Supp. (2) SCC 689 and Union of India and others vs. Bhagwan Singh (1995 (6) SCC 476). In Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others (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 to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

8. In view of the above, since there was a considerable delay in claiming the compassionate appointment and following the above decisions, this Court finds that there is absolutely no merit in the writ petition. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

dn
To

- 1.The District Collector,
Thiruvarur District,
Thiruvarur
- 2.The District Elementary School Education Officer,
Thiruvarur District,
Thiruvarur
- 3.The Assistant Elementary School Education Officer,
Thiruvarur District,
Thiruvarur.

+1cc to Mr.Kumara Raja, Advocate SR.87164
+1cc to the Government Pleader SR.87317, 87369

W.P.No.29524 of 2019

MG (CO)
CB(22/11/2019)



WEB COPY