

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.06.2019

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26572 of 2017

K.Selvakumar

... Petitioner

-vs-

1.The District Collector,
Villupuram District,
Villupuram.

2.The Revenue Divisional Officer,
Villupuram.

3.The Tahsildar,
Vikkiravandi Taluk,
Villupuram District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 3rd respondent to conduct detailed enquiry and send report as per order of 1st respondent passed in O.M.(A4)/4340/2016 dated 24.02.2016 and consequently direct the 1st respondent to appoint the petitioner under compassionate appointment within a stipulated time as fixed by this Honourable court.

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.P.Siva Shamuga Sundaram
Spl. Govt. Pleader

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O R D E R

This Writ Petition has been filed, seeking for a direction to the 3rd respondent to conduct a detailed enquiry and send a report as per order of 1st respondent passed in O.M.(A4)/4340/2016 dated 24.02.2016, with the consequential direction to the 1st respondent to appoint the petitioner under compassionate appointment.

2. The case of the petitioner is that his father worked as Village Assistant at Periababusamudram Village, Villupuram Taluk and died on 24.09.1995, while he was in service. The 3rd Respondent, after enquiry on 09.01.1996, had granted Family Welfare Fund and the 2nd Respondent also directed the release of

Special Provident Fund and Gratuity under Tamil Nadu Village Servants Special Provident Fund-cum-gratuity by proceedings dated 17.10.1996.

3. It is the further case of the petitioner that he had submitted a representation on 31.12.2015 followed by a reminder dated 24.02.2016, seeking appointment on compassionate ground and though the 1st Respondent directed the 3rd respondent to conduct a thorough enquiry and submit a report, such direction has not yet been complied with by the 1st Respondent, despite receipt of his further representation dated 08.09.2017 by the Respondents on 13.09.2017. Therefore, the petitioner, having left with no other efficacious remedy, is before this Court, seeking for the above direction.

4. The learned Special Government Pleader appearing for the Respondents has strenuously contended that the petitioner's father died on 24.09.1995 and the first application of the petitioner is dated 31.12.2015, which has not been submitted within three years from the date of the petitioner attaining majority, as the petitioner is aged about 36 years as on the date of filing the present writ petition. It is the further contention of the learned Special Government Pleader that though the petitioner's mother is said to have made an application in the year 1995, no proof has been adduced in support thereof. Moreover, an appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread-winner while in service and the compassionate employment cannot be granted as a matter of right by way of largesses, irrespective of the financial condition of the deceased / incapacitated employee's family at the time of his death or incapacity, as the case may be. Thus, it was pleaded that there is no justification on the part of the Petitioner in demanding compassionate appointment after a lapse of several years and the petition is liable to be dismissed.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. From the records, it appears that the application has been made only in the year 2015 by the petitioner beyond three years of his attaining majority and admittedly, there is a delay in seeking compassionate appointment. A perusal of the representation dated 24.09.1995, submitted by the Petitioner on 08.09.2017 discloses that though his mother had approached the authorities as early as in 1995 for compassionate employment, no copy of the documentary evidence had been furnished by the Petitioner for this Court's appraisal. A reading of the averments in the affidavit would unfold the fact that based on his mother's representation, she was granted the Family Welfare Fund and other monetary benefits and therefore, it is vividly

clear that the representation was for the grant of benefits and not for the compassionate appointment.

7. The Hon'ble Apex Court, while elaborately dealing with the issue of Compassionate Appointment in the case of Bhawani Prasad Sonkar vs. Union of India and others, reported in (2011) 4 SCC 209, had categorically held as follows:-

"20. Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules of regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

8. In a batch of cases having similar set of facts and circumstances in W.P.(MD)Nos.4129, 7045, 16624 and 20786 of 2014 and W.P.(MD)Nos.19455 and 19530 of 2018 [S.Gowtham Balu vs. The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai - 600 002 and others] decided on 24.09.2018, I have considered all the aspects and passed a detailed order by extending few suggestions to the Government, which read as under:

"6. The Government may think of issuing a fresh Government Order, if they want to stick on compassionate appointment scheme and one such condition is that compassionate appointment would be considered only for Class-IV employment and that age can be relaxed and the qualifications

can be entirely relaxed, as there is no need for any qualification for the purpose of appointing the persons as sweeper, gardener and the like. In the event the spouse refusing to accept the Class-IV employment, the same can be rejected and the children, after becoming major, cannot seek for compassionate appointment. There should be a prescribed procedures so that the application can be routed through Email and the said application will have to be considered and orders to be passed within the stipulated time. For making an application a time limit can be fixed as one year instead of three years. The appointment through compassionate appointment is a substantial litigation in this Court and the Government should ensure that they take an unbiased decision within a maximum period of six months so that the applicant will know where they stand. As a matter of right, the applicant cannot demand that based on the higher qualification they shall be appointed in Class-III posts, as the Class-III posts is meant either for promotion or for direct recruitment and shall not be taken for compassionate appointment. In addition to the above, this Court expects the Government to take into account the following suggestions and issue a Government Order immediately so that it can be given effect to from 1st January, 2019

i) the compassionate shall be made within a period of one year from the date of death of the deceased Government employee;

ii) the qualification for Class-IV employees can be completely exempted for the purpose of giving compassionate appointment and though Basic Rules provide for certain category of posts falling under compassionate appointment, the same is only illustrative in nature. For example, for appointment to the post of Sweeper, there is no need to prescribe any qualification and what is required is, it must be ensured as to whether persons to be appointed to the post of Sweeper on compassionate ground know to read and write and ride bicycle / two wheeler and other basic household / office works;

iii) as held by the Hon'ble Supreme Court in the case reported in [(2011) 4 SCC 209], the purpose of compassionate appointment is to meet the sudden crisis and there is no need to keep a post to claim after 18 years. Therefore,

it is clear that the request for appointment on compassionate ground for the child in the womb, by seeking reservation of one post till the child's majority cannot be entertained;

iv) whenever an application for compassionate appointment is made, it should be decided within a period of three months from the date of receipt of the said application and the person making such application for compassionate appointment should despatch the same either by speed post or by registered post. Once an application is received, it is open to the concerned authorities to call for the documents from the deponents / legal heirs so that her case can be considered and decision should be taken within a period of two months thereafter. Once a request is made calling for documents, the concerned person will have to submit the required documents within 15 days. If the application for compassionate appointment is not decided within three months from the date of receipt of such application, then the concerned Officer, who is responsible to take a decision thereon, should be removed from the post and posted in a non-sensitive post. This will avoid further litigation, as the persons applying for compassionate appointment have been approaching this Court for disposal of the representation after lapse of decades and getting an order so as to litigate unnecessarily and the order of disposal of representation is not a conclusive one for litigants, but a starting point of litigation;

v) the documents sought by the concerned authorities should be uploaded by the application so that there would be no quarrel with regard to non-consideration of vital documents by the authorities, while scrutinizing the application for compassionate appointment. The applicant shall also furnish his/her Cell Number, Email Address, etc., to enable the authorities to communicate the order to be passed in his/her application.

vi) for the sake of brevity, it is reiterated that the compassionate appointment should be restricted only to Class-IV employment instead of Class-III & IV so that the claim for compassionate appointment would be reduced;

vii) in case compassionate appointment is considered other than the spouse, then 25% of the gross monthly income shall be directly paid to the spouse by way of NEFT or RTGS and the said gross income is subject to income tax deductions. The reason for not granting 25% of the amount from the Nett salary is that the employee may take loans and ensure that the take-home salary is very less and the 25% of the amount payable on the Nett after loan deduction would be very meagre and will not be sufficient to have a square meal for the day for the spouse at the old age. Many of the children, after getting employment, are driving the parents to old age home and in order to ensure that the spouses are protected and taken care of, 25% of the amount has got to be given to them. As per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, it is the bounden duty of children to take care of them and their children should not be allowed to leave their parents in lurch, thereby letting them scot-free and the old aged people at the fag end of their life are rushing to Courts to get money from their children. In order to avoid such a haphazard situation, this Court wants to ensure that 25% of the gross shall be paid to the spouses, which would be subjected to income tax payable by the employee.

viii) the spouse, who is getting 25% of the amount as mentioned supra shall produce the life certificate once in a year preferably on the 1st March of every year;

ix) we suggest that the Government issues a Government Order to that effect, as the Court is burdened with not less than 5% of the service matters, seeking employment on compassionate ground from various departments, such as Electricity Board, etc and since there is no uniform guidelines for all the Government departments, there is always a confusion and chaos, thereby creating unnecessary litigations;

x) the compassionate appointment shall not be considered as a back door entry and it is based on rules, regulations, guidelines and Government Orders. However, it should be remembered that compassionate appointment is not an usual recruitment process and the candidates

seeking such appointment will have to satisfy all the requirements contemplated under the Rules with regard to the age, qualification, etc, but however, it is subject to relaxation depending upon the circumstances of each case."

9. In view of what is stated herein-above, I find no merit in this writ petition. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1.The District Collector,
Villupuram District,
Villupuram.
- 2.The Revenue Divisional Officer,
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- 3.The Tahsildar,
Vikkravandi Taluk,
Villupuram District.

+1cc to Mr.A.Saravanan, Advocate, S.R.No.46632
+1cc to the Government Pleader, S.R.No.46957

W.P.No.26572 of 2017

RSI (CO)

RRS (09/07/2019)

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