



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.14587 of 2019

R.Nithesh Kumar

... Petitioner

vs.

- 1.The Secretary to Government
Department of Municipal Administration
& Water Supply
Fort St.George, Chennai-600 009
- 2.The Director of Municipal Administration
Ezhilagam, Chepauk, Chennai-600 005
- 3.The Commissioner
Corporation of Madurai
Madurai-625 002

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to consider the petitioner for an appointment in Madurai Corporation on the compassionate grounds.

For Petitioner : Mr.K.Shanmugakani

For Respondents : Mr.A.Muthu Karuppan

Additional Government Pleader for R1 & R2

Mr.R.Prabhu Ramachandran for R3

ORDER

The relief sought for in the present writ petition is for a direction to the respondents to consider the writ petitioner for appointment in Madurai Corporation, on compassionate grounds.

2. The father of the writ petitioner was an employee of Madurai Corporation and died on 04.09.2011, while he was in service. At the time of the death of his father, the writ petitioner was a minor and therefore, the mother of the writ petitioner Smt.R.Shanmugavalli submitted an application seeking appointment on compassionate grounds. By order dated 09.11.2012, the respondents directed the mother of the writ petitioner to appear before the authorities competent along with all documents. Accordingly, the mother of the writ petitioner appeared before the authorities concerned and thereafter, there was no reply from the respondents.



3. The writ petitioner states that his mother is aged about 47 years and she is overaged. Thus, the writ petitioner submitted an application seeking appointment on compassionate grounds on 14.05.2019. However, the respondents have not responded to the application. Thus, the writ petitioner is constrained to move the present writ petition.

4. First of all, there is no provision under the scheme of compassionate appointment to entertain the second application from another legal heir of the deceased employee for providing compassionate appointment. When there is no provision to entertain the second application of another legal heir of the deceased employee, the case of the writ petitioner cannot be considered for appointment on compassionate grounds. This apart, the mother of the writ petitioner had already submitted an application for appointment on compassionate grounds during the year 2012. However, she had failed to pursue the remedy vigilantly within a reasonable period of time. Admittedly, after the submission of the application, the mother of the writ petitioner had not pursued the application nor approached the competent forum for the purpose of redressing her grievances. The very inaction of the legal heir of the deceased employee is a ground to draw a factual inference that the penurious circumstance arose on account of the sudden death of the employee became vanished due to efflux of time.

5. The penurious circumstance of the family of the deceased employee is to be assessed thoroughly. The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstance arising on account of the sudden death of the Government employee. Thus, the authorities competent have to consider each and every cases carefully as well as strictly with reference to the terms and conditions of the scheme of compassionate appointment.

6. Compassionate appointment is a special scheme. Compassionate appointment is a concession. Appointment on compassionate grounds can never be claimed as a matter of right. Scheme of compassionate appointment is to be implemented strictly in accordance with the terms and conditions. Appointment on compassionate grounds being in violative of Articles 14 and 16 of the Constitution of India. The State must implement the special schemes cautiously and in a restricted manner so as to ensure that equal opportunity is provided in the public employment. In the event of large scale special appointments without following the rules in force, the constitutional rights of all other eligible candidates are infringed. Thus, such special schemes should not exceed the limits and the same is to be implemented in accordance with the terms and conditions.

7. The scheme of compassionate appointment is implemented to mitigate the circumstances arising on account of the sudden death of the employee. Thus, the penurious circumstances are the vital



factors to be assessed by the competent authority before extending the benefit of the scheme of compassionate appointment.

8. The Honourable Supreme Court of India, in the case of **Government of India and another vs. P.Venkatesh**, in Civil Appeal No.2425 of 2019, dated 01.03.2019, has held as follows:

"The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected on 3 January 1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then re-consider the representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on 13 November 2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9 August 2016, nearly twenty one years had elapsed since the date of the death of the employee."

9. The Apex Court in the case of **State of Himachal Pradesh and another vs. Shashi Kumar**, reported in (2019) 3 SCC 653, has ruled as follows:



"18. While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependants of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. The basis of the policy is that it recognises that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependent member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfil the terms of the policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependent member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.

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35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the writ petition before the High Court was instituted on 11-5-2015. The application for compassionate appointment was submitted on 8-5-2007. On 15-1-2008 the Additional Secretary had required that the amount realised by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal, this Court has emphasised that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.



36. We are not impressed with the submission that delay should not be taken into account since Para(8) of the policy/scheme contemplates that in a situation where all the dependent children of the deceased employee have yet to attain the age of majority, the time-limit for submission of an application is extended until the first of the children attains the age of twenty-one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including *State of J & K v. Sajad Ahmed Mir* and *Local Admn. Deptt. v. M. Selvanayagam*.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place."

10. Under these circumstances, this Court is not inclined to consider the relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (Records)

/ True Copy /

Sub Assistant Registrar(CS-)

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To:

1.The Secretary to Government,
Department of Municipal Administration
& Water Supply, Fort St.George, Chennai-600 009.

2.The Director of Municipal Administration,
Ezhilagam, Chepauk, Chennai-600 005.

+1 CC to M/s.R.PRABU RAMACHANDRAN, Advocate
(SR-72510[F]dated 01/07/2019)

+1 CC to M/s.K.SHANMUGAKANI, Advocate(SR-72480[F] dated 01/07/2019)