



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.10048 of 2015

G.Pichaivel

... Petitioner

vs.

The District Collector
Collectorate Premises
Madurai, Madurai District

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondent to provide appointment on compassionate ground to the petitioner based on his application dated 24.09.2007.

For Petitioner : Mr.C.M.Arumugam

For Respondent : Mr.K.Mu.Muthu

Additional Government Pleader

O R D E R

The relief sought for in the present writ petition is to direct the respondent to provide appointment to the writ petitioner on compassionate grounds based on the application dated 24.09.2007.

2. The father of the writ petitioner was employed as Village Assistant and he died on 07.06.2001, while he was in service. Admittedly, the writ petitioner submitted an application seeking appointment on compassionate grounds on 24.09.2007, after a lapse of about six years from the date of the death of the employee.

3. The primary condition for submission of the application for compassionate appointment is that the legal heirs of the deceased employee should submit application within a period of three years from the date of the death of the employee. Admittedly, in the present case on hand, the application seeking compassionate appointment itself was submitted by the writ petitioner after a lapse of about six years. Thus, the application deserves to be rejected in *limine*.

4. This apart, the scheme of compassionate appointment being an exception cannot be implemented after a lapse of many years from the date of the death of the employee. The efflux of time is a ground to draw a factual inference that the penurious circumstances arose as a result of the sudden demise of the Government employee became vanished. The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising



on account of the sudden death of the Government employee. Thus, the delay results ineligibility and in fact, the loss of time is a ground for rejection of the application itself.

5. The Honourable Supreme Court of India, in the 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."

6. 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:



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.

7. The Apex Court reemphasized that the special schemes, like, the scheme of compassionate appointment cannot be extended after a lapse of many years from the date of the death of the employee. The scheme being an exception and in violation of Articles 14 and 16 of the Constitution of India must be implemented strictly in accordance with the terms and conditions of the scheme. Enlarging the scope of the scheme would result infringement of the constitutional rights of all other citizens, who all are aspiring to secure public employment through open competitive process. Thus, the scheme of compassionate appointment is to be provided within a reasonable time and to mitigate the circumstances arising on account of the sudden death of the employee. Under these circumstances, considering the facts of the present case on hand, this Court has no hesitation in coming to the conclusion that the deceased employee passed away on 07.06.2001 and the writ petitioner submitted application on 24.09.2007, after a lapse of six years and he filed the present writ petition on 18.06.2015, after a lapse of about fourteen years from the date of the death of the employee and hence, the relief sought for in the present writ petition as such cannot be granted.



8. Accordingly, the writ petition stands dismissed. No costs.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar (CS)

krk

To:
The District Collector,
Collectorate Premises,
Madurai, Madurai District.

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.69429

W.P. (MD) No.10048 of 2015
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