



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.20318 of 2015

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G.Sethusoureswari

... Petitioner

vs.

1.The State of Tamil Nadu
rep.by its Secretary to Government
School of Education Department
Chennai

2.The Director of School Education
Chennai

3.The District Educational Officer
Ramanathapuram

4.The District Elementary Educational Officer
Ramanathapuram

5.The Assistant Elementary Educational Officer
Thiruppullani, Ramanathapuram District ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the order passed by the 3rd respondent in his proceedings in Mu.Mu.No.1686/A1/2015 dated 21.07.2015 and quash the same and direct the respondents to appoint the petitioner on compassionate appointment as per her educational qualification.

For Petitioner : Mr.M.R.Vijayakumar

For Respondents : Mrs.S.Srimathi

Special Government Pleader

O R D E R

The order of rejection, dated 21.07.2015, passed by the third respondent, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2. The father of the writ petitioner was employed as Headmaster in a Panchayat Union Elementary School and died on 08.08.2001, while he was in service. The mother of the writ petitioner submitted an application to the authorities competent seeking appointment on compassionate grounds on 31.07.2002 and thereafter, the writ petitioner herself submitted an application on 24.11.2003.



3. The learned counsel for the writ petitioner states that the application of the writ petitioner was not considered by the competent authorities. Thus, the writ petitioner earlier filed a writ petition in W.P.(MD) No.2858 of 2015 and this Court passed an order on 03.03.2015 directing the authority concerned to consider the writ petitioner's application and pass orders. Based on the orders of this Court, the impugned order is passed by the third respondent on 21.07.2015 rejecting the claim of the writ petitioner, on the ground that one of the legal heirs of the deceased employee is working as a Teacher in the Government School and the other three legal heirs of the deceased employee were married and therefore, the family of the writ petitioner is not in penurious circumstances and accordingly, the claim of the writ petitioner regarding the appointment on compassionate grounds cannot be considered.

4. On a perusal of the impugned order, it is seen that the indigent circumstances of the family of the writ petitioner were enquired into by the competent authorities. On enquiry, it was found that the wife of the deceased was receiving family pension, one of the legal heirs of the deceased employee is working as a Teacher in the Government School and the other three daughters were already married. This apart, there was an enormous delay on the part of the writ petitioner in pursuing her relief as her father / employee died in the year 2001 and she filed the earlier writ petition in the year 2015 and now, already 18 years lapsed. This being the factum, this Court is of the opinion that the family of the writ petitioner cannot be provided with the benefits of the scheme of compassionate appointment.

5. 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

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:

"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."



7. Under these circumstances, this Court is not inclined to consider the relief as such sought for in the present writ petition in view of the legal principles settled across the country. Accordingly, the writ petition stands dismissed. No costs.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar (CS)

To:

1. The Secretary to Government,
School of Education Department,
Chennai.
2. The Director of School Education,
Chennai.
3. The District Educational Officer,
Ramanathapuram.
4. The District Elementary Educational Officer,
Ramanathapuram.
5. The Assistant Elementary Educational Officer,
Thiruppullani, Ramanathapuram District.

+1cc to Mr.V.PANNEER SELVAM, Advocate, SR.No.69851

W.P. (MD) No.20318 of 2015

KK/SAR/26.06.2019/5P-7C

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