

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 18.06.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.20444 of 2015**

R.Vishal

... Petitioner

vs.

The District Collector
Collectorate Office
Virudhunagar District
Virudhunagar - 626 003

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records in m6/jg.126/2002 dated 07.10.2014 of the respondent and quash the same and direct the respondent to appoint the petitioner on compassionate ground.

For Petitioner : Mr.S.Natheshraaja

For Respondent : Mr.K.Mu.Muthu

Additional Government Pleader

O R D E R

The order of rejection, dated 07.10.2014, passed by the respondent, rejecting the claim of the writ petitioner for appointment on compassionate grounds, is under challenge in the present writ petition.

2. Admittedly, the mother of the writ petitioner was employed as Revenue Inspector in Virudhunagar District and died on 07.12.2001, while she was in service. The father of the writ petitioner pre-deceased his mother. The elder brother of the writ petitioner, through his maternal aunt, initially submitted an application seeking appointment on compassionate grounds on 28.11.2003. However, the said application was not pursued on the ground that the elder brother of the writ petitioner pursued his higher studies and joined the Engineering College. Thereafter, he completed his B.E.Degree. Thus, the writ petitioner, on attaining the age of majority, submitted a fresh application seeking appointment on compassionate grounds on 30.10.2013. The present writ petition is filed by the writ petitioner on the ground that the elder brother had not pursued his application and he had completed his B.E.Degree and therefore, on attaining the age of majority, the writ petitioner submitted an application on 30.10.2013 and hence, the same is to be considered.

3. The learned counsel for the writ petitioner states that the family of the writ petitioner is in indigent circumstances even



now and the writ petitioner as well as his elder brother are being taken care of by their maternal aunt, who is an aged person and therefore, the benefit of the compassionate appointment is to be extended to the writ petitioner.

4. This Court is of the considered opinion that the scheme of compassionate appointment being an exception is to be implemented strictly in accordance with the terms and conditions of the scheme. Any misplaced sympathy should not cause a social injustice so as to deprive all other eligible candidates to secure public employment through open competitive process under the constitutional scheme. Scheme of compassionate appointment being a special one is to be implemented strictly with reference to the terms and conditions. Undoubtedly, the writ petitioner at the time of the death of his mother was minor. On attaining the age of majority, he submitted the application during the year 2013, after a lapse of 12 years from the date of the death of the employee.

5. This Court is of the considered opinion that as per the terms and conditions of the scheme, the elder brother of the writ petitioner alone is competent to submit application for compassionate appointment. Rightly, he filed an application. However, he joined the Engineering course and abandoned his claim. After a lapse of 12 years from the date of the death of the employee, the writ petitioner submitted an application. Therefore, the family of the writ petitioner was able to survive for more than 12 years. Thus, the penurious circumstances arose on account of the sudden death of the employee became vanished. This being the factum, now after a lapse of 18 years, the claim of the writ petitioner seeking compassionate appointment cannot be considered in view of the legal principles settled by the Court.

6. 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."

7. 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."

8. 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

// True Copy //

Sub Assistant Registrar (CS)

krk

To:
The District Collector,
Collectorate Office,
Virudhunagar District,
Virudhunagar - 626 003.

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 69731

W.P. (MD) No.20444 of 2015

NSN (CO)
TR (28.06.2019) 5P 3C