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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.571 of 2015

and

M.P.[MD]Nos.1 & 2 of 2015

P.Gobalakrishnan

... Petitioner

Vs.

The Management of
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director,
Kumbakonam.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records from the respondent relating to the impugned orders / letters dated 16.07.2008 passed in Letter No.TNSTC/Kumba/E4/2398/2008 dated 07.12.2009 passed in Letter No.TNSTC/Kumba/E4/343/2009, quash the same and consequently to direct the respondent to provide appointment to the petitioner in the existing vacancies in post of Tradesman as notified in the notification of the respondent No.03/Kum/2014 as per G.O.Ms.No.32 dated 08.01.1986 on the reason that his father was medically discharged from the services of the respondent and award cost.

For Petitioner : Mr.S.Arunachalam

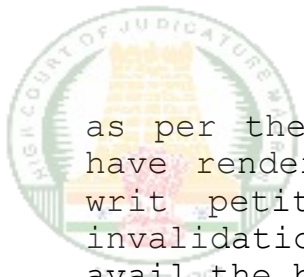
For Respondent : Mr.D.Sivaraman
Standing Counsel

O R D E R

The order of rejection 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 Shri.R.Pethaperumal was employed as a Conductor in the respondent Transport Corporation and after completion of about 15 years of service, the father of the writ petitioner was dispelled and medically invalidated and discharged from service by the order of the respondent dated 01.07.1987. Even at the time of relieving, the father of the writ petitioner was aged about 54 years and therefore, the son or daughter of the employee is not entitled to avail the benefit of compassionate appointment. When the medical invalidation is provided before the age of 50 years, then alone the legal heirs are entitled for compassionate appointment.

3.This apart, another condition for compassionate appointment



as per the scheme is that the employee medically invalidated must have rendered the minimum service of six years. The father of the writ petitioner had crossed 54 years at the time of medical invalidation and therefore, the writ petitioner was not eligible to avail the benefit of the scheme of compassionate appointment.

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4. Learned Standing Counsel for the respondent states that even the writ petitioner submitted application on 07.06.2008 after a lapse of 21 years from the date of relieving of the father of the writ petitioner on the ground of medical invalidation. In view of the fact that there was an enormous delay even in filing an application seeking appointment on compassionate grounds, the case of the writ petitioner was not considered.

5. It is pertinent to note that even at the time of filing of the writ petition, the petitioner was about 34 years and now he would be around 39 years. The very purpose and project of the scheme of compassionate appointment is to mitigate the circumstances on account of the sudden incidences where the employee was medically invalidated and relieved from service. When the penurious circumstances was in existence, then alone the scheme of compassionate appointment can be extended. It is not as if one employment should be provided to the family of the employee of the Transport Corporation. The scheme of compassionate appointment has got a specific purpose and object. Only in the event of indigent circumstances, the cases are to be considered in accordance with the terms and conditions of the scheme. Even at the time of filing of the writ petition, the petitioner was aged about 34 years. This apart, the application seeking compassionate appointment itself is made after 21 years from the date of relieving of the father of the writ petitioner. Under these circumstances, the rejection of the case of the writ petitioner is in accordance with the terms and scheme of compassionate appointment and there is no infirmity as such.

6. The Hon'ble Supreme Court of India in number of cases held that the scheme of compassionate appointment cannot be granted after a lapse of many years. In this regard, it is relevant to state the judgment of the Hon'ble Supreme Court of India, in the case of **State of Himachal Pradesh and another vs. Shashi Kumar** reported in **(2019) 3 SCC 653**, which reads 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. Dependents 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."

7. In the case of the **Government of India Vs. P. Venkatesh (Civil Appeal No. 2425 of 2019)**, the Hon'ble Supreme Court of India 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."

8. In view of the legal principles settled by the Supreme Court that the scheme of compassionate appointment cannot be extended after a lapse of many years, this Court is not inclined to consider the cases as the very application itself was submitted after 21 years from the date of relieving of the father of the petitioner on two grounds.

9. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar (CS)

To

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-72840[F] dated 02/07/2019)

+1 CC to M/s.S.ARUNACHALAM, Advocate (SR-73042[F] dated 03/07/2019)

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KK/SAR/02.08.2019/4P-3C/