



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. (MD) No. 11500 of 2019
and
W.M.P. (MD) No. 8774 of 2019

P. Ezhilvannan

... Petitioner

Vs.

1. The District Collector,
Sivagangai, Sivagangai District.

2. The District Revenue Officer,
Sivagangai, Sivagangai District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned memo issued by the first respondent, dated 07.01.2019, in O.Mu.Aa.8/5870/2018, quash the same and consequently, direct the respondents herein to appoint the petitioner to any other suitable post in the Revenue Department.

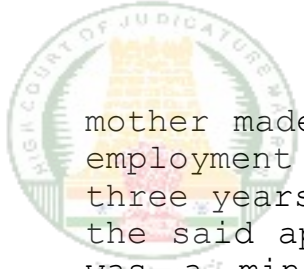
For Petitioner : Mr. S. Saravana Kumar

For Respondents : Mr. K. Chellapandian
Additional Advocate General
Assisted by
Mr. Aayiram K. Selvakumar
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the impugned memo issued by the first respondent, dated 07.01.2019, in O.Mu.Aa.8/5870/2018, and consequently, direct the respondents herein to appoint the petitioner to any other suitable post in the Revenue Department.

2. According to the petitioner, his father viz., S. Prabakar was working as Revenue Inspector in Devakottai, Tiruppathur Taluk, Sivagangai District. While he was in service, he died on 12.12.1999, leaving behind the petitioner's mother viz., Rajalakshmi, the petitioner's sister viz., Lavanya and the petitioner, as his legal heirs. At the time of death of her father, the petitioner was a minor, aged about 15 years and therefore, his



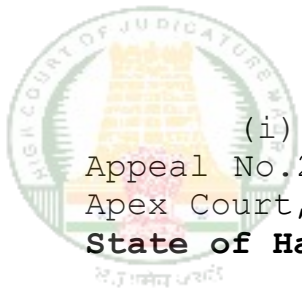
mother made an application on 08.02.2000 to the respondents seeking employment assistance for him under compassionate ground, within three years from the date of death of the petitioner's father. But, the said application was rejected on the ground that the petitioner was a minor and the second respondent advised the petitioner's mother to give an application after the petitioner attains the age of majority. The petitioner had attained the age of majority in the year 2004 and thereafter, he continued his higher education.

3. Further, according to the petitioner, he came to know from the Office of the respondents herein that the compassionate appointment was temporarily stopped by the Government and hence, he has not filed any application at the time of attaining the age of majority. Thereafter, after finishing his Degree Course, the petitioner made many applications to the first respondent seeking appointment under compassionate ground from the year 2007 itself and the application of the petitioner, dated 26.05.2008, was rejected by the first respondent herein, vide his Memo dated 03.06.2008, on the ground that he has not applied within three years from the date of death of his father.

4. According to the petitioner, the State Government has issued G.O.Ms.No.42, Labour and Employment Department, dated 12.03.2007, extending the period for receiving the application for appointment under compassionate ground for three months from the date of issuance of that order, considering the ban order on filling up of vacant posts, which was in force from 29.11.2001 to 21.02.2006. Therefore, the petitioner has submitted an application for appointment under compassionate ground to the first respondent, within the time limit. But, the first respondent without noticing the said Government Order, rejected the petitioner's application, vide his impugned Memo dated 07.01.2019. Hence, the present Writ Petition.

5. Based on the counter affidavit filed by the first respondent, the learned Additional Advocate General appearing for the respondents submitted that the time limit for making an application for appointment under compassionate ground is three years from the date of death of the Government servant as per G.O. (Ms)No.120, Labour and Employment Department, dated 26.06.1995 and based on the decision taken by the Cabinet, accepting the recommendations of the Staff committee, the Secretary to Government, Labour and Employment Department, issued Letter (Ms)No.202, dated 08.10.2007, stating that the existing time limit of three years for filing applications from the date of death of Government Servant shall be continued and the same is applicable to all cases, including where the Government Servant had died in service even prior to 26.6.1995.

6. In support of his submission, the learned Additional Advocate General has relied on the following decisions of the Hon'ble Apex Court:-



(i) **The Govt. of India and another Vs. P.Venkatesh** [Civil Appeal No.2425 of 2019, decided on 01.03.2019], wherein the Hon'ble Apex Court, following its earlier judgment in **Umesh Kumar Nagpal Vs. State of Haryana** reported in **1994 (4) SCC 138**, has held as follows:-

"Bearing in mind the above principles, this Court held:

"6.For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the High Court is unsustainable.

We accordingly allow the appeal and set aside the impugned judgment and order of the High Court. In consequence, we affirm the judgment of the Tribunal dismissing the Original Application. There shall be no order as to costs.''

(ii) **State of Himachal Pradesh and another Vs. Shashi Kumar** reported in **2019 (3) SCC 653**, wherein at Paragraph Nos.35 to 37, the Hon'ble Apex Court has held 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 realized 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 vs. State of Haryana [1994 (4) SCC 138]**, this Court has emphasized 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 dependant 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 Vs. Sajad Ahmed Mir [2006 (5) SCC 766, para 11]** and **Local Administration Department Vs. M.Selvanayagam [2011 (13) SCC 42, paras 11 to 13]**.

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. In a catena of decisions, it is well settled law that the scheme of compassionate appointment is to tide over the financial constraints of the family due to the sudden demise of the breadwinner of the family and that the person seeking for employment assistance should make an application to the competent authorities within three years from the date of death of the employee, subject to satisfying the eligibility criteria, for the post to which he/she seeks for.

8. On a perusal of the records, it is seen that the petitioner has not submitted his application within three years from the date of death of his father, but, he has applied, nearly after 19 years, from the date of death of his father, viz., 12.12.1999, and therefore, the petitioner is not entitled to any relief as prayed for in this Writ Petition.

9. In the light of the facts and circumstances of the case and the decision of the Hon'ble Apex Court cited supra, the impugned order of the first respondent dated 07.01.2019, rejecting the request of the petitioner, is perfectly valid and there is no reason warranting interference by this Court. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The District Collector,
<https://hcservices.ecourts.gov.in/hcservices/>
Sivagangai,
Sivagangai District.



2.The District Revenue Officer,
Sivagangai,
Sivagangai District.

+1 CC to M/s.SPL GP (SR-76405[F] dated 19/07/2019)

+1 CC to M/s.S.SARAVANA KUMAR, Advocate (SR-76472[F] dated
19/07/2019)

W.P. (MD) No.11500 of 2019
17.07.2019

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JM/19.08.2019/5P/5C