



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.10831 of 2014

and

M.P.[MD]No.2 of 2014

WEB COPY

1.M.Chinnamani
2.M.Uthayakumar

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The District Educational Officer,
Periyakulam, Theni District.

4.The Headmaster,
Government Higher Secondary School,
Veerapandi, Theni District.

... Respondents

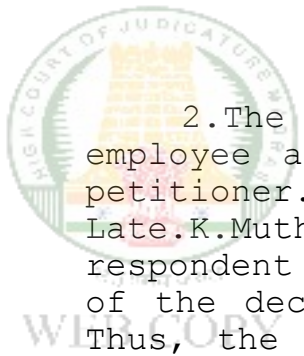
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the second respondent Director of School Education vide Mu.Mu,No.30374/J32014 dated 09.06.2014 refusing compassionate employment to the second petitioner, quash the same and further direct the second respondent Director of School Education to provide compassionate employment to the second petitioner in commensurate with his educational qualification.

For Petitioner : Mr.R.Rajaraman

For Respondents : Mrs.S.Srimathy
Special Government Pleader

O R D E R

The order of rejection rejecting the claim of the writ petitioners for compassionate appointment in proceedings dated 09.06.2014 is under challenge in the present writ petition.



2.The first writ petitioner is the wife of the deceased employee and the second respondent is the son of the first writ petitioner. The husband of the first writ petitioner Late.K.Muthaiah, was employed as B.T.Assistant in the fourth respondent school and died on 24.06.2005. At the time of the death of the deceased employee, the second writ petitioner was a minor. Thus, the applications submitted for compassionate appointment was not entertained. However, on attaining the age of majority, the second writ petitioner submitted another application.

3.In view of the fact that no decision was taken for more than nine years, the writ petitioners earlier filed W.P.[MD]No.2761 of 2014. The said writ petition was disposed of on 20.02.2014 with a direction to consider the case of the writ petitioner. Pursuant to the orders passed by this Court on 20.02.2014, the impugned order of rejection has been issued in proceedings dated 09.06.2014. The order impugned states that the writ petitioner during the appropriate time, when the deceased employee passed away was a minor and therefore, the application cannot be entertained. This apart, there is a specific finding by the competent authorities that the family of the writ petitioner was not in indigent circumstances.

4.This apart, the elder brother of the second writ petitioner has completed B.E., degree and was employed. When the elder brother of the deceased employee after completing his B.E. Degree is employed, the authorities competent on enquiry found that the family was not in indigent circumstances.

5.This Court is of the considered opinion that the benefit of compassionate appointment cannot be extended to the family of the writ petitioner. The very purpose of providing compassionate appointment is to mitigate the circumstances arose on account of the sudden death of the deceased employee. The Hon'ble Supreme Court has also held that the family pension and the amount of terminal benefits are also be to taken into account for the purpose of ascertaining the penurious circumstances of the family. Thus, the finding of the competent authority that the family of the writ petitioners is not in penurious circumstances is to be considered. This apart, the elder brother of the second writ petitioner had not submitted any application for compassionate appointment. The reason for not submitting any application for compassionate appointment by the elder brother of the second writ petitioner is not explained.

6.However, this Court is of the considered opinion that the father of the second writ petitioner died in the year 2005 and the application submitted was kept pending for about 9 years and the writ petitioners filed earlier writ petition in the year 2014 and the present writ petition is filed challenging the order passed by the respondents pursuant to the directions issued by this Court. However, now 14 years lapsed from the date of the death of the deceased employee. Under these circumstances, the scheme of



compassionate appointment cannot be entertained, in view of the legal principles settled by 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. 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."

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 case of the writ petitioners at this point of time.

9. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

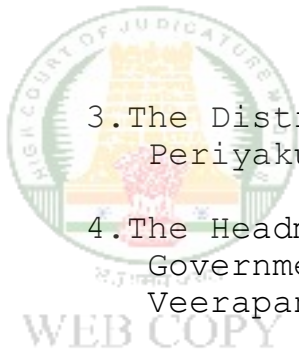
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Sub Assistant Registrar (CS-)

To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 600 009.

2. The Director of School Education,
College Road, Chennai - 600 006.



3.The District Educational Officer,
Periyakulam, Theni District.

4.The Headmaster,
Government Higher Secondary School,
Veerapandi, Theni District.

+1 CC to M/s.R.RAJARAMAN, Advocate (SR-79811[F] dated 05/08/2019)

+1 CC to M/s.SPL GP (SR-79930[F] dated 06/08/2019)

W.P[MD]No.10831 of 2014
05.08.2019

MR

ES/16.10.2019/5P/7C