



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.08.2019
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.11146 of 2014

and

M.P.[MD]No.1 of 2014 & WMP[MD]No.5825 of 2017

S.Selvam

... Petitioner

Vs.

The District Collector,
Madurai District,
Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent file in Na.Ka.84535/2011/௨௭.௮.7 dated 10.07.2013 pertaining to G.O.No.9 Labour and Employment dated 19.01.1998 and quash the same and to direct the respondent to consider the petitioner's employment to any suitable post as per petitioners qualification as against the post held by petitioner's father under compassionate ground in accordance with law expeditiously.

For Petitioner : Mr.G.Chandrasekar

For Respondents : Mr.M.Jeyakumar

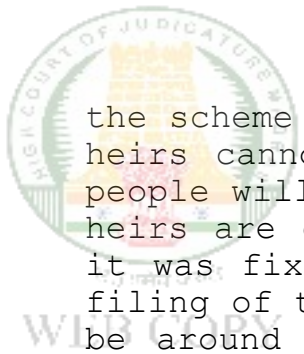
Additional Government Pleader

O R D E R

The order impugned prescribing the age limit for appointment on compassionate ground is under challenge in the present writ petition.

2.The scheme of compassionate appointment provides that the wife of the deceased employee can be appointed up to the age of 50 years. Thus, age concession was granted in favour of the spouse of the deceased employee. However, the legal heir are concerned, the maximum age limit fixed as per the terms and conditions of the scheme is 35 years. The writ petitioner, is the son of the deceased employee. The deceased employee passed away on 26.11.2005. The application seeking compassionate appointment was filed on 04.01.2006. However, he has not pursued the matter vigilantly. The writ petitioner filed the present writ petition in the year 2012.

3.Fixation of age limit cannot be quashed, in view of the fact that the scheme of compassionate appointment is a concession. When



the scheme itself is a concession, the age limit fixed for the legal heirs cannot be questioned. Normally presumption is after 35 years people will get employment somewhere. Therefore, as far as the legal heirs are concerned, 35 years is the age limit and for the spouse, it was fixed as 50 years. The Writ petitioner even at the time of filing of the writ petition was aged about 43 years and now he would be around 48 years. This apart, the scheme cannot be implemented after a lapse of many years. The father of the writ petitioner died on 26.11.2005 and now 14 years lapsed. Under these circumstances, the writ petitioner is not eligible for compassionate appointment.

4.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. 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."



5. 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."

6. 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 petitioner at this point of time.



7. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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// True Copy //

Sub Assistant Registrar(CS)

To

The District Collector,
Madurai District,
Madurai.

+1 CC to Mr.G.CHANDRASEKAR, Advocate (SR-79908[F] dated
06/08/2019)

+1 CC to SPL GP (SR-79967[F] dated 06/08/2019)

W.P[MD]No.11146 of 2014

05.08.2019

MR

MK (16.10.2019) 4P 4C