



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.08.2019
CORAM

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THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.[MD]No.11252 of 2014
and
M.P.[MD]No.1 of 2014

R.Jeyasankar

... Petitioner

Vs.

1. Director of School Education,
D.P.I. Complex,
College Road,
Nungambakkam Road,
Chennai - 06.

2. The District Education Officer,
Paramakudi,
Ramanathapuram 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 passed by the first respondent in his proceedings in Mu.Mu.No.120906/J3/2005 dated 09.06.2014 and quash the same as illegal and consequentially to direct the respondents to appoint the petitioner on compassionate ground within the period that may be stipulated by this Court.

For Petitioner	: Mr.S.Mohamed Suhail for M/S.Ajmal Associates
For Respondents	: Mrs.S.Srimathy Special Government Pleader

O R D E R

The order of rejection dated 09.06.2014, 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 Late.C.Raju, was employed as Assistant Headmaster in the Education Department and died on 06.03.1997 while he was in service. Learned counsel for the petitioner made a submission that the elder brother of the writ petitioner initially submitted an application seeking appointment on compassionate ground on 23.04.1998 and the said application was rejected.



3.The writ petitioner who is the other legal heir submitted an application seeking appointment on compassionate ground. The said application was submitted on 05.07.2004 and the application submitted by the writ petitioner was rejected in proceedings dated 09.06.2014, which is impugned in the present writ petition.

4.Learned Counsel for the writ petitioner states that the District Educational Officer made assessment regarding the source of income of the family of the deceased employee and he submitted a report stating that family was in indigent circumstances. Accordingly, the name of the writ petitioner was included in the list of seniority maintained for providing appointment on compassionate ground. However, the appointment was not given. Thus, the writ petitioner was constrained to move the present writ petition.

5.Learned Special Government Pleader appearing on behalf of the respondents disputed the contentions raised by stating that the deceased employee was having a wife and four sons. The wife is receiving a decent amount of family pension, in view of the fact that the deceased employee retired as Assistant Headmaster. Thus, she is capable of maintaining herself. As far as the four sons are concerned, one son is working in Indian Army and he is an Advocate. The third son is a self-employed person. Thus, the family cannot be construed as in indigent circumstances. This apart, the writ petitioner submitted an application on 05.07.2004, after the rejection of the first application submitted by the elder brother of the writ petitioner. There is no provision under the scheme of compassionate appointment to entertain the second application submitted by the second legal heir of the deceased employee.

6.This Court is of the opinion that the facts and circumstances now placed before this Court reveals that the family was not in indigent circumstances and the wife of the deceased employee is receiving a decent amount of family pension. This apart, the deceased employee passed away on 06.03.1997 and the first application submitted by the elder brother of the writ petitioner also was not pursued thereafter. The writ petitioner submitted an application on 05.07.2004 after a lapse of 7 years from the date of the death of the deceased employee. Now, after a lapse of about 22 years, the claim of the writ petitioner for compassionate appointment cannot be considered 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 petitioner at this point of time.

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

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. Director of School Education,
D.P.I. Complex, College Road,
Nungambakkam Road, Chennai - 06.

2. The District Education Officer,
Paramakudi, Ramanathapuram District.

+1. C.C. to SPECIAL GOVERNMENT PLEADER Advocate SR.No.81200

W.P[MD]No.11252 of 2014

08.08.2019

MR

TK/15.10.2019/4P/4C