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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.08.2019
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P[MD]No.12396 of 2014
and
M.P.[MD]No.2 of 2014

1.Maruthamuthu
2.R.Vigneswaran ... Petitioners

Vs.

1.The Secretary,
Tamil Nadu Electricity Board,
Chennai.

2.The Chairman,
Tamil Nadu Electricity Board,
Chennai.

3.The Superintending Engineer,
Trichy Electricity Distribution Circle (City),
Urban, Trichy. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records in Na.Ka.No.125255/639/Ne.P1/Junior Assistant/Ko.Va.Vea/2012 dated 28.11.2012 on the file of the third respondent and quash the same as illegal, ultra vires and unconstitutional and inconsequence direct the respondents to accommodate the second petitioner in a suitable employment on compassionate ground in the Tamil Nadu Electricity Board, commensurate with his qualification.

For Petitioner : Mr.V.Raghavachari
For Respondent No.1 : Mr.K.Mu.Muthu
Additional Government Pleader
For Respondents 2&3 : Mr.S.Dhayalan
Government Advocate

O R D E R

The order of rejection dated 28.11.2012, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2.The deceased employee who is the mother of the second writ petitioner Smt.M.Rajeswari, was employed as Assesser in the office

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of the Junior Engineer, TNEB, Navalpattu Division and died on 15.07.1992, while she was in service. The second petitioner during the relevant point of time was a minor. Thus, he was not in a position to submit application. On attaining the age of majority, the second writ petitioner Mr.Vigneswaran, submitted an application to provide appointment on compassionate grounds on 18.10.2012. The said application was rejected on the ground that the application itself was submitted after a lapse of three years from the date of the death of the deceased employee.

3.This Court is of the considered opinion that compassionate appointment is a concession and a special scheme. Thus, the scheme of compassionate appointment can never be claimed as a matter of legal right. All appointments are to be done strictly in accordance with the terms and conditions of the recruitment rules in force. The very purpose and object of the scheme of such appointment is to mitigate the circumstances arising on account of the sudden death of a Government employee. Thus, the scheme is to be extended within a reasonable period of time, if there is an enormous delay in providing an appointment, then the factual inference is to be drawn and that the penurious circumstances arose, on account of the death of a Government employee became vanished. Thus, the compassionate appointment cannot be provided after a lapse of many years. It is not as if one appointment is to be provided to the legal heirs of the deceased employee.

4.In this regard, the legal principles are settled 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 unitimely 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*

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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

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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 petitioners.

7.Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

MR

To
1.The Secretary,
Tamil Nadu Electricity Board,
Chennai.

2.The Chairman,
Tamil Nadu Electricity Board,
Chennai.

3.The Superintending Engineer,
Trichy Electricity Distribution Circle (City),
Urban, Trichy.

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-83090[F] dated 22/08/2019)

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