



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.13037 of 2014

M.Sahul Hameed

... Petitioner

-Vs-

1.The Tahsildar,
Radhapuram Taluk,
Tirunelveli District.

2.The District Collector,
Tirunelveli District, Tirunelveli.

... Respondents

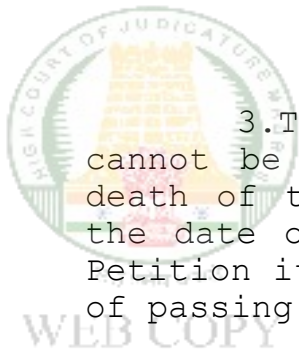
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent in Na.Ka.No.A4/53082/2009, dated 22.11.2010, quash the same, and consequently, direct the second respondent to appoint the petitioner in any suitable post on compassionate ground.

For Petitioner : Mr.R.V.Rajkumar
For Respondents : Mr.S.Dhayalan,
Government Advocate.

ORDER

The order of rejection dated 22.11.2010, rejecting the claim of the writ petitioner for appointment on compassionate grounds, is under challenge in the present Writ Petition.

2.The father of the writ petitioner late Mohaideen Masthan was employed as Office Assistant and died on 23.05.1997, while he was in service. The writ petitioner during the relevant point of time was minor. Thus, he submitted an application, seeking appointment on 13.08.2007. The said application was rejected on the ground that the application seeking appointment was not preferred within a period of three years from the date of death of the deceased employee. The said rejection order dated 22.11.2010, is challenged in the present Writ Petition, which was filed on 06.08.2014, after a lapse of four years from the date of passing of the impugned order. Thus, there is a consistent delay on the part of the writ petitioner in pursuing the remedy. The father of the writ petitioner died on 23.05.1997. The application itself was filed, after a lapse of 10 years.



3.The scheme of compassionate appointment being a concession, cannot be extended after a lapse of many years from the date of death of the deceased employee. Now, almost 22 years lapsed from the date of death of the deceased employee. This apart, the Writ Petition itself was filed, after a lapse of four years from the date of passing of the impugned order.

4.In this regard, it is relevant to cite 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 Hon'ble Supreme Court of India, the claim of the writ petitioner for appointment on compassionate ground cannot be granted at this length of time and the impugned order is in consonance with the terms and conditions of the scheme of compassionate appointment and there is no infirmity as such.

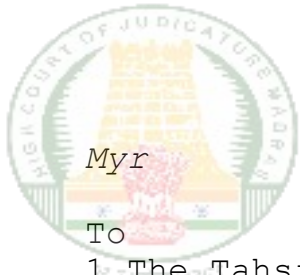
7. With these observations, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



Myr

To

1.The Tahsildar,
Radhapuram Taluk,
Tirunelveli District.

2.The District Collector,
Tirunelveli District, Tirunelveli.

+1 CC to M/s.SPL GP (SR-82890[F] dated 21/08/2019)

W.P. (MD) No.13037 of 2014

20.08.2019

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