



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD) .No.13179 of 2014

N.Swaminathan

... Petitioner

-Vs-

1. The District Educational Officer,
Thiruvarur, Thiruvarur District.

2.The Headmaster,
Government High School,
Chandrasekara Puram,
Valangaiman Taluk,
Thiruvarur Taluk.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in Mu.Mu.No.7151/A1/13, dated 06.05.2014 and quash the same and consequently direct the first respondent to appoint the petitioner under the compassionate grounds in any suitable post within the time stipulated by this Court.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

The order of rejection dated 06.05.2014, 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 Mr.N.Nagarajan was employed as a Sweeper in the second respondent's school and died on 24.11.2006, while he was in service. The learned counsel



appearing on behalf of the writ petitioner states that on account of the sudden demise of the father of the writ petitioner, the family was in penurious circumstances. Thus, the mother of the writ petitioner submitted an application seeking appointment on compassionate grounds on 03.09.2007. However, the writ petitioner, on the date of application was a minor and not completed the age of majority. However, the application submitted by the mother of the writ petitioner was kept pending for long years. The learned counsel for the writ petitioner states that the order of rejection is perverse. The reasons stated in the impugned order is very much contrary to the guidelines issued by the Government in letter dated 23.08.2005. Thus, the reasoning given in the impugned order is not in consonance with the Government letter. In this regard, the clarification letter dated 04.05.2010, enumerates that the clarification came to effect, with effect from the date of the letter dated 04.05.2010. Thus, the case of the writ petitioner cannot be rejected by citing the clarification letter dated 04.05.2010, as the application itself was submitted by the mother of the writ petitioner on 03.09.2007, before the issuance of the clarification letter. Thus, three years rules cannot be applicable in respect of the case of the writ petitioner. Thus, the reasoning given in the impugned order is not applicable and accordingly, the case of the writ petitioner is to be considered.

3. In view of the letter cited above, the non-completion of three years; not attaining the age of majority on the date of application, is not an impediment for the purpose of considering the application submitted by the mother of the writ petitioner.

4. The learned Special Government Pleader appearing on behalf of the respondents opposed the contentions by stating that the writ petitioner is not eligible for compassionate appointment on the ground that the writ petitioner was a minor, the day on which, the application was submitted. In view of the fact that on the date of the application, the writ petitioner was a minor, the application was not considered.

5. Considering the arguments, this Court is of the opinion that undoubtedly, at the time of the death of the deceased employee, the writ petitioner was a minor. The mother of the writ petitioner submitted an application on 03.09.2007. The Government letter cited in the impugned order came into effect, with effect from the year 2010. Thus, the reasoning stated in the impugned order cannot be correct. However, the fact remains that the father of the writ petitioner passed away on 24.11.2006 and the mother of the writ petitioner submitted an application on 03.09.2007 and during 2007-2014, except by submitting ~~representations~~ the writ petitioner had not pursued the matter.



Only after passing the rejection order during the year 2014, the present writ petition is filed, now that after 13 years have lapsed from the date of death of the deceased employee. The Courts also repeatedly held that the object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of sudden death of an employee. Thus, the scheme of compassionate appointment cannot be extended after a lapse of many years. The very purpose is not to provide one appointment to the family of the deceased employee. The very object is to provide appointment in respect of the families in distress and therefore, the appointments are to be made within a reasonable period of time. After a long lapse of time, the penurious circumstances arose on account of the sudden death of an employee becomes vanished. Thus, the scheme of compassionate appointment cannot be provided after a lapse of many years from the date of death of the deceased employee. This being the scope of the scheme, this Court is of the opinion that now after a lapse of 13 years from the date of death of the deceased employee, the appointment cannot be provided to the writ petitioner. The writ petitioner has to secure public employment only by participating in the process of selection through open competitive process.

6. 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."

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

<https://hcservices.ecourts.gov.in/hcservices> 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 above legal principles already settled by the Hon'ble Supreme Court of India, the writ petitioner is not entitled for appointment on compassionate grounds, after lapse of so many years. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Educational Officer,
Thiruvarur, Thiruvarur District.
2. The Headmaster,
Government High School,
Chandrasekara Puram,
Valangaiman Taluk,
Thiruvarur Taluk.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-80126[F] dated 06/08/2019)

W.P. (MD) .No.13179 of 2014
05.08.2019

sj i

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