



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

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P[MD]No.13213 of 2014

E.Benorin Playel

... Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Department of School Education,
Secretariat,
Chennai - 9.

2.The Director of School Education,
College Road,
Chennai - 9.

3.The District Educational Officer,
Thuckalay,
Kanyakumari District.

4.The District Elementary Educational Officer,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for all the connected and relevant records relating to the proceedings in Na.Ka.No.8047/Aa1/06 dated 06.06.2014 passed by the third respondent herein and quash the same and consequently direct the respondents to appoint the petitioner on compassionate grounds as per the petitioner's qualification.

For Petitioner : Mr.D.Christenson Jugunu
For Respondents : Mrs.S.Srimathy
Special Government Pleader

O R D E R

The order of rejection rejecting the claim of the writ petitioner for compassionate appointment in proceedings dated 06.06.2014 is under challenge in the present writ petition.

2.The writ petitioner is the adopted daughter of the deceased employee Selvi.N.Evangeline and the deceased employee passed away on 05.12.2000 while she was in service. The petitioner's mother is the



sister of the deceased employee. Thus, the deceased employee adopted the writ petitioner as her daughter. On account of the death of the deceased employee, the petitioner submitted an application seeking appointment on compassionate grounds on 11.08.2003. The said application was not considered for many years and the impugned order of rejection was passed on 06.06.2014, after a lapse of about 14 years from the date of death.

3.Learned Special Government Pleader made a submission that the ban for appointment was in force in between the years 2001 to 2006. Thereafter, the case of the writ petitioner was considered and rejected on the ground that the writ petitioner was a married daughter and therefore, she is not entitled for appointment on compassionate grounds. During the relevant point of time, married daughters were not eligible for compassionate appointment.

4.Learned Special Government Pleader further made a submission that the writ petitioner in her capacity as an adopted daughter of the deceased employee secured the property worth more than 35 lakhs on account of the death of the deceased employee.

5.When the writ petitioner got the properties worth more than 35 lakhs due to the death of the deceased employee, the family cannot be construed as in indigent circumstances. This apart, the claim of the writ petitioner was rejected in the year 2014 after a lapse of about 14 years from the date of the death of the deceased employee. The petitioner was not initially pursuing her remedy soon after her death. All these circumstances establishes that the family was not in indigent circumstances. The very scheme of compassionate appointment is to help the family in distress on account of the sudden death of the employee. The lapse of many years would give the factual inference that the penurious circumstances arose on account of the death of the employee became vanished. Thus, at this length of time, compassionate appointment cannot be extended to the writ petitioner after a lapse of about 19 years from the date of death of the deceased employee.

6.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."

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.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
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+1 CC to M/s.SPL GP (SR-79931[F] dated 06/08/2019)

W.P[MD]No.13213 of 2014
05.08.2019

mr
JM/26.08.2019/4P/6C