



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.14006 of 2014

D.Nagasundar

... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
Health Department,
Chennai - 9.
2. The Director,
Public Health & Preventive Medicine,
Chennai - 6.
3. The Deputy Director of Health Services,
Sivagangai District, Sivagangai.
4. The Block Medical Officer,
Government Primary Health Centre,
Palayanoor, Sivagangai District.

... Respondent/s

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records from the second respondent in his proceedings in ந.க.எண்.45740/படிதா4/2013/இரு3 dated 17.07.2014 and quash the same and consequently direct the respondents to provide employment to the petitioner on compassionate ground.

For Petitioner : Mr.N.Sathish Babu

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader

O R D E R

The order rejecting the claim of the writ petitioner for compassionate appointment in proceedings dated 17.07.2014 is under challenge in the present writ petition.

2.The reason stated in the impugned order is that the wife of
<https://hcservices.ecourts.gov.in/hcservices/>



the deceased employee did not pursue the claim for appointment. The elder brother of the writ petitioner initially submitted an application seeking appointment on compassionate ground. However, the elder brother of the writ petitioner had not pursued the claim on account of the fact that he completed B.E., degree and joined the course for higher studies. The said application was converted for the purpose of providing appointment to the writ petitioner herein. The writ petitioner is the second son of the deceased employee. Thus, he sought for appointment on 06.04.2006, after a lapse of four [4] years from the date of the death of the deceased employee.

3.The claim of the writ petitioner was rejected on the ground that there is no provision under the scheme of compassionate appointment to entertain the application submitted by the second legal heir and the first legal heir namely, the elder brother of the writ petitioner submitted an application and not pursued the same on account of the fact that he completed B.E. Degree and left for higher studies. This being the factum, the application of the writ petitioner was rejected.

4.Learned Counsel for the petitioner states that the family is in indigent circumstances and therefore, the appointment is to be provided. The Hon'ble Supreme Court held that the quantum of family pension and the terminal benefits settled are also to be taken into account for the purpose of ascertaining the indigent circumstances of the family. In the present case, the elder brother of the writ petitioner was highly qualified and employed somewhere. Thus, the application was converted for providing appointment to the second son of the deceased employee. Such an option is impermissible with reference to the terms and conditions of the scheme of appointment.

5.Considering the facts and circumstances, the family of the writ petitioner is not in indigent circumstances and that apart, the deceased employee passed away on 31.05.2002 and second application submitted by the writ petitioner after a lapse of three years cannot be considered. Further, now after a lapse of about 17 years from the date of death of the deceased employee, the scheme of 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. Dependents 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."

6. 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."

7. 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.

8. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Secretary to Government of Tamil Nadu,
Health Department,
Chennai - 9.
2. The Director,
Public Health & Preventive Medicine,
Chennai - 6.
3. The Deputy Director of Health Services,
Sivagangai District,
Sivagangai.



4. The Block Medical Officer,
Government Primary Health Centre,
Palayanoor, Sivagangai District.

+1 CC to M/s.SPL GP (SR-79991[F] dated 06/08/2019)

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+1 CC to M/s.N.SATHISH BABU, Advocate (SR-80139[F] dated
07/08/2019)

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MR

AE/ (16.10.2019) 5P 7C