



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.14978 of 2014

WEB COPY

A.Mokkai Pidaran

... Petitioner

-Vs-

The Commissioner,
Madurai Corporation,
Madurai.

... Respondent

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 proceedings of the 3rd respondent in Ma.Ni.11/23434/2013, dated 22.8.2013 and quash the same as illegal, unlawful and unconstitutional and direct the respondent to provide suitable employment under compassionate ground.

For Petitioner : Mr.P.T.Rameshraja

For Respondent : Mr.R.Murali

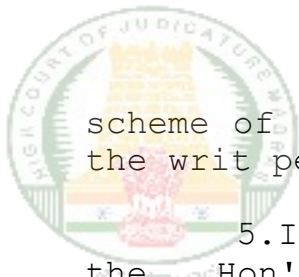
ORDER

The order of rejection dated 22.08.2013, 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.Alagan, was employed as a Road Gang in the engineering wing of the respondent corporation and died on 24.03.1996, while he was in service. However, the writ petitioner during the relevant point of time was a child and the application was unable to be submitted by the mother of the writ petitioner.

3.The learned counsel appearing on behalf of the writ petitioner states that the mother of the writ petitioner submitted an application during the relevant point of time. However, she had pursued the application and therefore, the respondent had not considered the claim to the mother of the writ petitioner for appointment. After, attaining the age of majority, the writ petitioner submitted an application seeking appointment on compassionate ground on 16.07.2013 and the said application was rejected by the respondent, on the ground that the application was not submitted within a period of three years from the date of death of the deceased employee.

4.The learned counsel appearing on behalf of the respondent states that the very application seeking appointment was filed by the writ petitioner after a lapse of above 17 years from the date of the deceased employee, now already 23 years lapsed. Therefore, the



scheme of compassionate appointment cannot be extended in favour of the writ petitioner.

5. 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. 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 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
The Commissioner, Madurai Corporation, Madurai.

+1 CC to Mr.R.MURALI, Advocate SR-79844.

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CS (22.08.2019) 3P 3C

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