

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 29.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.15814 of 2014**

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E.Gokulakannan

... Petitioner

-Vs-

1. The Secretary,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai.

3. The Commissioner,
Madurai Corporation,
Anna Salai, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to give compassionate appointment to the petitioner in the light of the representations sent by the petitioner's mother dated 18.09.2006, 31.12.2011, 30.12.2012 and the representation sent by the petitioner on 10.01.2013, 26.07.2014 and 01.09.2014 for the death of the petitioner's father who previously worked as Record Clerk in Thirunagar Selection Grade Town Panchayat.

For Petitioner	: Mr.A.Kannan
For R1 and R2	: Mr.M.Jeyakumar, Additional Government Pleader.
For R3	: Mr.R.Murali

ORDER

The relief as such sought for the in the present Writ Petition is for a direction to direct the respondents to provide compassionate appointment to the writ petitioner based on the representations submitted by the writ petitioner as well as his mother.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the father of the writ petitioner Late Elangovan was employed as Record Clerk in Town Panchayat and died on 09.08.2006, while he was in service. The mother of the writ petitioner was also suffering from illness and she could not able to submit application during the relevant point of time. However, an application, seeking appointment on compassionate grounds was filed by the writ petitioner on 10.01.2013, after lapse of about 7 years from the date of the death of his father. The said application filed in the year 2013 was not considered. Thus, the writ petitioner is constrained to move the present Writ Petition.



3.As per the terms and conditions of the scheme of compassionate appointment, an application seeking appointment must be preferred within a period of three years from the date of death of the deceased employee. Admittedly, the deceased employee passed away on 09.08.2006 and the application seeking appointment was filed on 10.01.2013, after lapse of about 7 years.

4.This being the admitted fact, the very scheme of compassionate appointment cannot be extended to the writ petitioner, now, after a lapse of 13 years from the date of death of the deceased employee.

5.Compassionate appointment is a concession. The scheme of compassionate appointment is being a non-statutory scheme, the same cannot be claimed as a matter of legal right. Compassionate appointment is to be provided within a reasonable period of time. The very purpose and object of the scheme is to mitigate the circumstances arisen on account of sudden death of the Government employee. Thus, the scheme cannot be implemented after a lapse of so many years.

6.The legal principles in this regard are already settled by the Hon'ble Supreme Court of India in many judgments. 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 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."

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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 facts and circumstances as well as the legal principles, the writ petitioner is not entitled for the relief of



compassionate appointment. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

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// True Copy //

Sub Assistant Registrar (CS)

To

1. The Secretary,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai.

+1 CC to Mr.R.MURALI, Advocate (SR-78399[F] dated 30/07/2019)

+1 CC to SPL GP (SR-78484[F] dated 30/07/2019)

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MYR

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