



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.1717 of 2014

WEB COPY

P.Karunakara Pandian

... Petitioner

Vs.

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The Revenue Divisional Officer,
Tuticorin.

3.The Tahsildar,
Tuticorin Taluk,
Tuticorin District.

... Respondents

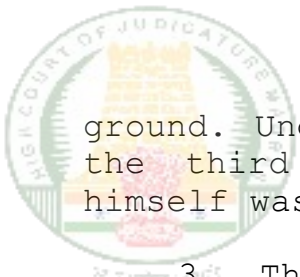
PRAYER: Writ Petitions under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to provide compassionate appointment to the petitioner as per the third respondent's proceedings in Na.Ka.A6/16609/2009, dated 04.04.2013 within a stipulated time.

For Petitioner : Mr.A.P.Muthupandian,
For Respondents : Mr.S.Dhayalan,
Additional Government Pleader

ORDER

The petitioner, who is the fifth son of the deceased employee, who was holding the post of Village Assistant, claiming benefit of compassionate appointment. The order of rejection, dated 04.04.2013 issued by the third respondent is sought to be quashed in the present writ petition.

2.The writ petitioner states that his father Late.Sri.Pitchaikannu was appointed as Village Assistant during the year 1966 and died on 12.06.1996 while he was in service. The petitioner states that he made an application in the year 1996 seeking appointment on compassionate ground. However, his case was not considered. The writ petition itself is filed in the year 2014 and at the time of filing of the writ petition, the petitioner was aged about 40 years and now he would be around 45 years. If at all the petitioner claims that he submitted an application seeking appointment on compassionate ground in the year 1996 itself, it is not explained why there was an enormous delay of 16 years in filing the present writ petition claiming appointment on compassionate

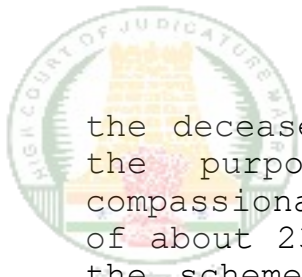


ground. Undoubtedly, the impugned order of rejection was passed by the third respondent on 4.4.2013 however, the writ petitioner himself was not pursued the application prudently and vigilantly.

3. The learned Additional Government Pleader appearing on behalf of the respondents states that the petitioner is not eligible for compassionate appointment. The father of the writ petitioner died in the year 1996 and the application itself was submitted after a lapse of 3 years. The original application submitted was to provide appointment to the first legal heir and that was not pursued. Subsequently, the application to provide appointment for the writ petitioner was filed only during the year 2010 after a lapse of 14 years from the date of death of the deceased employee. Based on that application, the impugned order was passed. Thus, the application itself was belated and there is no infirmity in the rejection order. The facts leading to the above submission is narrated in paragraph 7 of the counter affidavit, which is extracted hereunder:-

"7. In the light of the above Government orders, it is submitted that in this case, no application for compassionate appointment has been received from the spouse of the deceased Government servant within three years as prescribed in G.Os cited in item No.1 and b above. With her consent letter the writ petitioner's elder brother Stephen Durairaj applied for appointment on compassionate grounds on 06.03.2006 after a lapse of 10 years from the date of the death of the deceased Government Servant. Besides, the wife of the deceased Government Servant namely the mother of the writ petitioner nominated first her elder son Stephen Durairaj at first and then she changed her nomination to the writ petitioner on 15.02.2012 for appointment on compassionate grounds. There is no provision in any rules or Govt. orders empowering her to change her nomination for compassionate appointment according to her whims and fancies. The request of one Shenbaga Lakshmi of Thoothukudi District for changing her nomination for compassionate appointment from her son to her divorced daughter has been rejected by the Principal Secretary/Commissioner of Revenue Administration, Chennai in his Letter No.MF 4/35882/08 dated 15.06.2009 on the ground of lack of rules for changing the earlier nomination. Hence the petition of the writ petitioner for appointment on compassionate grounds is not in accordance with Government orders and liable for rejection."

4. This Court is of the considered opinion that the scheme of compassionate appointment cannot be extended after a lapse of many years. The father of the writ petitioner died on 12.06.1996. There was an enormous delay in pursuing the remedy by the Legal Heirs of



the deceased. There is no provision to change the Legal Heirs for the purpose of providing appointment under the scheme of compassionate ground. Under these circumstances, now after a lapse of about 23 years from the date of death of the deceased employee, the scheme of compassionate appointment cannot be extended. The writ petitioner is also aged about 45 years and he is over aged. In respect of the scheme of compassionate appointment, recently the Supreme Court passed two orders, which are extracted hereunder:-

5.The Honourable Supreme Court of India, in the in the case of **Government of India and another vs. P.Venkatesh**, in Civil Appeal No.2425 of 2019, dated 01.03.2019, 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."

6. The Apex Court in the case of **State of Himachal Pradesh and another vs. Shashi Kumar**, reported in (2019) 3 SCC 653, has ruled 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.

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35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the writ petition before the High Court was instituted on 11-5-2015. The application for compassionate appointment was submitted on 8-5-2007.

On 15-1-2008 the Additional Secretary had required



that the amount realised by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal, this Court has emphasised that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Para(8) of the policy/scheme contemplates that in a situation where all the dependent children of the deceased employee have yet to attain the age of majority, the time-limit for submission of an application is extended until the first of the children attains the age of twenty-one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including *State of J & K v. Sajad Ahmed Mir* and *Local Admn. Deptt. v. M. Selvanayagam*.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place."

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

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The Revenue Divisional Officer,
Tuticorin.

3.The Tahsildar,
Tuticorin Taluk,
Tuticorin District.

+1 CC to M/s.SPL GP (SR-78208[F] dated 29/07/2019)

+1 CC to M/s.A.P.MUTHU PANDIAN, Advocate (SR-78444[F] dated
30/07/2019)

W.P. (MD) No.1717 of 2014
26.07.2019

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