



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.07.2019
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.17820 of 2014

and

M.P.[MD]No.1 of 2014

J.Joyce Therese

... Petitioner

Vs.

1. The Director of Elementary Education,
Chennai.
 2. The District Elementary Educational Officer,
Sivagangai District.
 3. The District Educational Officer,
Devakottai.
 4. The Additional Assistant Elementary Educational Officer,
Kallal,
Sivagangai District.
- ... Respondents

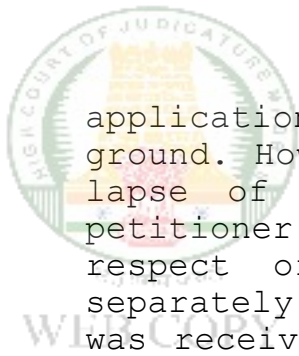
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the third respondent in his proceedings in Na.Ka.No.3947/A1/2012 dated 24.07.2014 and to quash the same and direct the respondents to appoint the petitioner on compassionate appointment as per her educational qualification.

For Petitioner : Mr.V.Panneer Selvam
for M/s.C.S.Associates
For Respondents : Mrs.S.Srimathy,
Special Government Pleader

O R D E R

The order of rejection dated 24.07.2014, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2.Learned Counsel for the writ petitioner states that the father of the writ petitioner who was employed as Head Master in Panchayat Union Elementary School, Thalakkavoor, Managiri Post, Sivagangai District passed away on 08.07.2003, while he was in service. The petitioner states that immediately on 05.09.2003, an



application was submitted seeking appointment on compassionate ground. However, the impugned order of rejection was passed after a lapse of about 11 years on 24.07.2014, stating that the writ petitioner got married and living separately with her husband. In respect of the deceased employee, his wife alone was living separately. As far as the livelihood of the wife is concerned, she was receiving the family pension and received other benefits also. There is no legal heir in the family to maintain. Under those circumstances, the competent authority came to the conclusion that the family was not in indigent circumstances.

3.This Court is of the considered opinion that the assessment of indigent circumstances of the family of the deceased employee is of paramount importance. The very purpose of providing compassionate appointment is to mitigate the circumstances arising on account of the sudden death of the Government employee. The family in distress alone is entitled for appointment on compassionate ground. It is the circumstances in which the Government employee died and the indigent circumstances alone are the main grounds for the purpose of extending the benefit of compassionate appointment and not otherwise.

4.It is not as if the candidate can suit some convenience. However, the authorities competent are bound to conduct an enquiry effectively and find out whether the family is in distress and unable to maintain themselves. In this case, the deceased employee was working as Head Master. The writ petitioner got married and was living with her husband separately during the relevant point of time. Learned Counsel for the writ petitioner now states that the writ petitioner is living with her mother. That alone cannot be the criteria. As far as the married daughters are concerned, the yardstick to be adopted must be different than that of the unmarried daughter. The authorities competent are bound to assess the source of income including the family pension. This being the criteria to be followed, this Court is of the considered opinion that the writ petitioner is not entitled for appointment.

5.This apart, the deceased employee passed away on 08.07.2003, the application was filed on 05.09.2003 and the impugned order is passed on 24.07.2014. The writ petitioner has not pursued her remedy. Certain representations sent to the respondents is of no avail. Even though there is enormous delay in passing the orders by the respondents, even at the time of filing of the writ petition, the petitioner was aged about 34 years and now she would be around 39 years and now, crossed the age limit for appointment. Thus, the writ petitioner cannot be appointed at this length of time. This apart, the deceased employee passed away on 08.07.2003 and now after a lapse of about 16 years, after the death of the employee, compassionate appointment cannot be granted.



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. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Director of Elementary Education,
Chennai.



2. The District Elementary Educational Officer,
Sivagangai District.

3. The District Educational Officer,
Devakottai.

4. The Additional Assistant Elementary Educational Officer,
Kallal,
Sivagangai District.

+1 CC to SPL GP (SR-75227[F] dated 15/07/2019)

W.P[MD]No.17820 of 2014

and

M.P. [MD]No.1 of 2014

12.07.2019

MR

MK (16.10.2019) 5P 6C