



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.18813 of 2014

M.Maheswari

... Petitioner

-Vs-

1.The Regional Executive Director,
Airport Authority of India,
Southern Region,
AAI Operational Officer Complex,
Chennai Airport, Chennai-600 027.

2.The Senior Manager, (Aerodrome),
Airport Authority of India,
Civil Aerodrome,
Madurai Airport,
Madurai-625 022.

3.The Aerodrome Officer,
National Airports Authority,
Madurai Aerodrome,
Madurai-625 022.

4.The Accounts Officer,
Civil Aviation Department,
Regional Pay & Accounts Office,
NAD, Residential Colony,
Meenambakkam, Chennai-27.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to provide appointment on compassionate grounds to the petitioner on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress within a time frame.

For Petitioner : Mr.M.Arun Murugan

For R1 to R3 : Mr.C.Godwin

For R4 : No Appearance



ORDER

The relief as such sought for in the present Writ Petition is to direct the respondents to provide appointment on compassionate grounds to the writ petitioner on grounds of immediate need of assistance.

2.The learned counsel appearing on behalf of the writ petitioner states that the husband of the writ petitioner late K.Muthiah was employed in the office of the respondents from 19.02.1983 to 06.11.1988 as Safaiwala (Sweeper). Suddenly, he became ill and his whereabouts was not known to the family members. The writ petitioner gave an advertisement in the local newspaper (Dinamalar) on 20.07.1989, stating that her husband was missing. The Village Administrative Officer, Perungudi, Madurai South Taluk issued Not Traceable Certificate on 11.04.1994. The said certificate is confirmed by the Sub-Inspector of Police, Perungudi Police Station, Madurai City, on 11.04.1994.

3.Though the Village Administrative Officer as well as the Sub-Inspector of Police gave certificates, stating that the husband of the writ petitioner was not traceable, such certificates are not valid in the eye of law. In the event of man missing cases, proper criminal case is to be registered by way of First Information Report and an investigation is to be conducted properly by the police officials concerned and after investigation, they are empowered to issue Certificate of Not Traceable in accordance with the law. The Village Administrative Officer and the Sub-Inspector of Police cannot give such a Certificate of Not Traceable and they have no competency. Even otherwise also, based on the certificate, the writ petitioner has not pursued the remedy for many years vigilantly and prudently.

4.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner submitted several representations.

5.Mere submission of representation is insufficient to establish that the grievances are pursued vigilantly. The Writ Petition is filed on 19.11.2014, after lapse of 20 years from the issuance of the certificate by the Village Administrative Officer. Even at the time of filing of the Writ Petition, the writ petitioner was aged about 45 years and now, she would be around 50 years.

6.The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arisen on account of sudden demise of an employee. In the present case, the husband of the writ petitioner was found missing from the year 1989 and the writ petitioner obtained the certificate from the Village



Administrative Officer in the year 1994 and filed this Writ Petition during the year 2014, after lapse of 20 years.

7.This being the factum, the scheme of compassionate appointment cannot be extended now, after lapse of so many years, in view of the fact that the writ petitioner has already been crossed the age of 50 years.

8.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."

9.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."

10. 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-II)

// True Copy //

Sub Assistant Registrar (CS)



W.P.(MD)No.18813/2014

+1cc to Mr.C.Godwin, Advocate, SR.No. 78796

+1cc to Mr.M.Arumugam, Advocate, SR.No.79047

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