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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.07.2019
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P[MD]No.18967 of 2014

N.Karthick ... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The President,
Chokkanathapuram Panchayat,
Sivagangai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to consider the petitioner in appointing for the post of Panchayat Secretary basing upon the Resolution No.18 submitted by the President of Chokkanathapuram Panchayat on 07.06.2014 on a sympathy manner under compassionate ground on the basis of the petitioner's representation dated 16.10.2014.

For Petitioner : Mr.R.Babu Jaganath
For Respondent No.1 : Mr.K.Mu.Muthu,
Additional Government Pleader
For Respondent No.2 : No appearance

O R D E R

The relief sought for in the present writ petition is for a direction to direct the first respondent to consider the writ petitioner for appointment to the post of Panchayat Secretary based on the resolution passed by the second respondent to the District Collector.

2.Learned Counsel for the writ petitioner states that the father of the writ petitioner Late.S.Narayanan, was employed as Panchayat Assistant in Chokkanathapuram Panchayat, Sivagangai District. The father of the writ petitioner died on 28.12.2009, while he was in service. Learned Counsel for the writ petitioner states that the writ petitioner submitted an application seeking appointment on compassionate ground during the year 2014 and the President of the Panchayat Union passed a resolution on 03.06.2014, recommending the case of the writ petitioner for appointment on compassionate ground. Thereafter, the writ petitioner submitted a representation on 14.10.2014, for appointment. None of his

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representations as well as the resolutions passed by the Panchayat President is considered by the District Collector. Thus, the writ petitioner is constrained to move the present writ petition.

3.Learned Counsel for the writ petitioner states that there is no fault on the part of the writ petitioner and he made application properly and the petitioner's application was recommended by passing a resolution by the President of the Panchayat Union.

4.Learned Additional Government Pleader for the first respondent states that the father of the writ petitioner was employed as Panchayat Assistant and there is no scheme for compassionate appointment to provide appointment to the legal heirs of the deceased Village Assistants.

5.This Court is of the considered opinion that even in case the scheme is applicable, then also the authorities competent are bound to verify the indigent circumstances of the family. In the present case on hand, the father of the writ petitioner passed away on 28.12.2009 and the writ petitioner submitted an application during the year 2014 and the resolution was also passed on 03.06.2014. Thus, the very application as well as the resolution was passed during the year 2014, after a lapse of about 4 ½ years from the date of death of the deceased employee. Thus, the factual inference is to be drawn that the penurious circumstances if at all arose on account of the death of the deceased employee in the year 2009, the same vanished on account of efflux of time.

6.This Court is of the considered opinion that delay is a vital aspect to ascertain the indigent circumstances of the family. If the family is able to get along for number of years, then the factual presumption is that the penurious circumstances did not exist and therefore, the scheme of compassionate appointment cannot be extended after a lapse of many years from the date of the death of the deceased employee.

7.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*

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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 unitimely 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."

8.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

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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."

9.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.

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

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

MR

To
The District Collector,
Sivagangai District,
Sivagangai.

+1 CC to M/s.SPL GP (SR-75232[F] dated 15/07/2019)

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