



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.10103 of 2015

and

M.P.(MD) No.1 of 2015

R.Santhi

... Petitioner

vs.

1.The Principal Secretary to the Government
School Education Department
Fort.St.George, Secretariat
Chennai-600 006

2.The Director of School Education
Chennai-600 006

3.The District Educational Officer
Madurai

4.The Headmaster
Government High School
S.Puliyangulam
Madurai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the Impugned order passed by the first respondent in Letter No.21803/Ne Va 1(2)/2011-2 dated 03.12.2014 and the proceedings of the 2nd respondent in Na.Ka.No.106288/A3/2006 dated 04.01.2008 and also the proceedings of the 3rd respondent in Pa.Mu.N./8307/A1/95 dated 18.02.2008 and quash the same and consequently direct the respondents herein to appoint the petitioner to the post of a Junior Assistant in the Office of the 3rd Respondent within the time stipulated by this Court.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mrs.S.Srimathy
Special Government Pleader

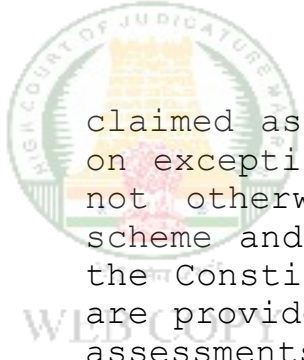
**ORDER**

The orders of the rejection passed by the original authority in proceedings dated 18.02.2008 and the appellate authority in proceedings dated 03.12.2014, in relation to the claim of the writ petitioner for compassionate appointment, are under challenge in the present writ petition.

2. The learned counsel appearing for the writ petitioner states that the father of the writ petitioner was employed as Watchman in the fourth respondent School and died on 04.07.1992, while he was in service. The writ petitioner submitted an application on 30.09.1993 and the same was not processed by the respondents till the year 2008. The original authority rejected the claim of the writ petitioner in proceedings dated 18.02.2008. Thereafter, the writ petitioner preferred an appeal to the Government and the Government also kept the appeal pending. Thereafter, the writ petitioner filed W.P.(MD) No.6439 of 2011 and this Court passed an order on 21.06.2011, directing the Government to consider the appeal and pass orders on the appeal preferred by the writ petitioner. Pursuant to the orders passed by this Court, the Government passed an order, in proceedings dated 03.12.2014, confirming the order of the original authority.

3. It is pertinent to note that even at the time of filing of the writ petition, the writ petitioner was aged about 46 years. Now, he would be around 50 years. Thus, the writ petitioner is over-aged and therefore, he is not eligible for appointment on compassionate grounds.

4. The admitted facts pleaded before this Court are that the father of the writ petitioner passed away on 04.07.1992 and the application for appointment on compassionate grounds was submitted in the year 1993. After a lapse of 16 years, the original authority rejected the claim of the writ petitioner and thereafter, the appeal was decided by the Appellate Authority in the year 2014. By that time, the writ petitioner became over-aged and now, he is aged about 50 years. This being the factum, this Court is of the considered opinion that the penurious circumstances arose on account of the sudden death of the employee became vanished. This apart, the very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death of the Government employee. Thus, it is not as if one appointment to be provided to the legal heir of the deceased employee. That is not the object of the scheme. A family in distress on account of the sudden death of the Government employee alone is to be saved. In the event of providing or enlarging the scope of compassionate appointment, the equality clause enunciated in the Constitution of India is violated. The scheme being a concession can never be



claimed as a matter of right. The scheme is to be provided only on exceptional circumstances, where the family is in distress and not otherwise. The compassionate appointment being a special scheme and an exception is in violation of Articles 14 and 16 of the Constitution of India. Appointments on compassionate grounds are provided without following the rule of reservation. No merit assessments are made. No process of selection is conducted. The only criteria is that a Government employee died while he was in service. The very constitutional mandate is that the State and Union should maintain an efficient public administration. In other words, efficient public administration to be provided by the Government is the constitutional mandate. Thus, enlarging the scope of such special schemes would vitiate the entire constitutional perspective.

5. Under these circumstances, this Court is of the considered opinion that equal opportunity in public employment is the constitutional mandate and lakh and lakh of young people of this great Nation are longing to secure public employment by burning their midnight lamps and participating in the open competitive process. This being the status of our great Nation, such special schemes are to be restricted so as to provide appointment only on genuine circumstances and for genuine cases, where the family is really in distress and there is no other source of income for leading their livelihood. This being the very spirit of the scheme of the compassionate appointment, this Court is of the considered opinion that now after a lapse of about 27 years from the date of death of the employee, the scheme of compassionate appointment cannot be extended in view of the settled legal principles as stated below:

6. 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."

7. 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."

8. In view above, the relief as such sought for in the present writ petition cannot be granted. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Principal Secretary to the Government,
School Education Department,
Fort.St.George, Secretariat,
Chennai-600 006.
- 2.The Director of School Education,
Chennai-600 006.
- 3.The District Educational Officer,
Madurai.
- 4.The Headmaster,
Government High School,
S.Puliyangaulam,
Madurai District.

+1 CC to SPL GP SR-75228.

+1 CC to M/s.VEERA ASSOCIATES, Advocate SR-75296.

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