



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.20989 of 2014

J.Thomas Muthukumar

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Tahsildar,
Srivaikundam Taluk,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his impugned order in Letter No.O.Mu.(A4)25952/2014 dated 24.11.2014 with regarding to the rejection of the petitioner compassionate appointment and quash the same as illegal, further direct the respondents to appoint the petitioner in any appropriate post according to the petitioner's education on compassionate ground.

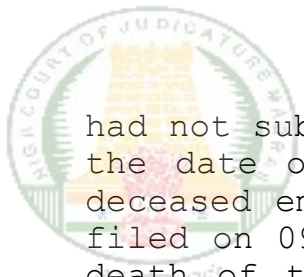
For Petitioner : Mr.P.Pethu Rajesh

For Respondents : Mr.S.Dhayalan,
Government Advocate

ORDER

The order of rejection, rejecting the claim of the writ petitioner for compassionate appointment in proceeding dated 24.11.2014, is under challenge in the present writ petition.

2.The father of the writ petitioner, who was employed in the Revenue Department as Village Assistant, died on 28.10.1998 while he was in service. The writ petitioner during the relevant point of time was a minor. The petitioner submitted an application after attaining the age of majority on 09.08.2004 and the said application was considered by the competent authorities and an order of rejection was passed on 24.11.2014 stating that the writ petitioner



had not submitted an application within a period of three years from the date of death of the deceased employee. At the out set, the deceased employee died on 28.10.1998 and the application itself was filed on 09.08.2004 after a lapse of about 6 years from the date of death of the deceased employee. The impugned rejection order was passed in the year 2014 and now, after a lapse of about 21 years from the date of death of the deceased employee. The scheme of compassionate appointment cannot be granted in favour of the writ petitioner in view of the legal principles settled by the Court.

3. This Court is of the opinion that consideration for appointment on compassionate ground is to be construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore does not create a vested right in favour of the claimant. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. A compassionate appointment is justified when it is granted to provide immediate succor to the deceased employee. Mere death of a Government employee in his harness, it does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family of the deceased employee.

4. The concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

5. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.

6. It is pertinent to note the fact that in a liberalized world as of today, there are plenty of avenues of employment available to the general public. Most of the people are not entirely dependent on the income of a single member of the family. Keeping this new social structure in mind, it would be seemingly right for the Courts to



ensure that there is no abuse of the scheme of compassionate appointment either by the employer or by the applicant/claimant.

7. The million dollar question is 'Whether offering 'appointment' on compassionate ground (i.e., sympathy) is the only option/solution to mitigate 'hardship and distress of the family of an employee dying in-harness? The answer is an emphatic 'No'. Firstly, the Rules, as such, contain no provision to ensure that the dependent who gets appointment shall continue to maintain other dependents.

8. A 'welfare state' like ours is free to initiate effective welfare scheme/s- and no one will be in a position to oppose. It is well settled that sympathy cannot be allowed to override statutory or Constitutional provisions, particularly when it is quality of the question of Welfare of the entire society and /or question of Governance. State like ours is free to wed the 'solemn object' to serve the society at large, purely according to the mandate under the Constitution of India. State cannot be allowed to look after 'welfare' of its own employees and their families alone.

9. In this view of the matter, this Court has to examine the scope of the scheme. The scheme being an exception, the authorities competent has to implement it in its strict terms. Equal opportunity in a public employment is a Constitution mandate.

10. All the recruitment process under the rules are made by the Competent Authorities by implementing the rules of reservation under the Constitution of India. This apart the regular competitive process has got a method of screening the candidates on merits even for the reserved categories. These two aspects are vital in regular recruitment process:

- First is adherence of the Rules of Reservation under the Constitution of India;
- Second is the comparative merit amongst the candidates who are participating in the regular open competitive process.

11. 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."

12. 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."

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

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Tahsildar,
Srivaikundam Taluk,
Thoothukudi District.

+1 CC to M/s.SPL GP (SR-79981[F] dated 06/08/2019)

W.P. (MD) No.20989 of 2014
05.08.2019

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