



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.4899 of 2014

R.Balasubramaniam

... Petitioner

-Vs-

1.The Secretary to the Government of Tamil Nadu,
Education Department, Fort St. George,
Chennai-600 009.

2.The Director of School Education,
DPI Building, College Road,
Nungambakkam, Chennai.

3.The District Educational Officer, Tiruchy.

4.The Assistant Elementary Educational Officer,
Manaparai, Tiruchy 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 of the third respondent in his proceedings L.Dis.6403/A1/2012 dated 22.04.2013 and quash the same and direct the third respondent to consider the application afresh considering the petitioner's application and appoint the writ petitioner on compassionate ground.

For Petitioner : Mr.J.Anandkumar

For Respondents : Mrs.S.Srimathy,

Special Government Pleader.

ORDER

The order of rejection, rejecting the claim of the writ petitioner for compassionate appointment in proceeding dated 22.04.2013, is under challenge in the present Writ Petition.

2.The mother of the writ petitioner, namely, P.Gandhi was employed as Assistant Teacher in Municipal Elementary School, Manaparai and died in the month of August, 1998, while she was in service. On account of sudden death of the mother of the writ petitioner, the writ petitioner filed an application on 30.12.1999 to the third respondent, seeking appointment on compassionate grounds. However, the application was not considered.

3.The writ petitioner himself admits that his brother completed law degree and started his practice as Advocate in Madras High Court and he was residing at Chennai separately. Thus, the family of the writ petitioner was in penurious circumstances and



therefore, the writ petitioner filed an application, seeking appointment. The said application was rejected in proceeding dated 22.04.2013, after a lapse of about 14 years from the date of filing of the application.

4.The reasons stated in the impugned order that on verification, the authorities competent found that the brother of the writ petitioner, namely, R.Rajkumar during the relevant point of time was working as District Munsif in the judiciary and he was an earning member. As per the Government Orders, if any one of the legal heir is employed in Government service, then they are not entitled for appointment on compassionate ground.

5.In the present case, the blood brother of the writ petitioner was working as District Munsif and therefore, the family of the deceased employee is not entitled to avail the benefit of the scheme of compassionate appointment. As far as the father of the writ petitioner is concerned, he was receiving family pension and subsequently, died. This being the factum, the writ petitioner has to secure public employment only by participating in the open competitive process on merits.

6.Compassionate appointment cannot be granted to the writ petitioner, now after a lapse of about 21 years from the date of death of the deceased employee. This apart, the officials competent found that the family of the writ petitioner is not in indigent circumstances and therefore, the writ petitioner cannot be provided with an appointment on compassionate grounds.

7.The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death. Thus, the scheme cannot be implemented after lapse of so many years. The scheme being exception, can never be claimed as a matter of legal right. Thus, equality clause enunciated in the Constitution must be scrupulously followed at the time of providing public employment to all the citizens. The appointment on compassionate grounds being exception cannot be extended after a lapse of so many years from the date of death of deceased employee.

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. Dependents 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.This being the legal principles consistently followed, which was upheld by the Hon'ble Supreme Court of India, the writ petitioner is not entitled to claim appointment on compassionate grounds and the impugned order is in consonance with the terms and conditions of the scheme of compassionate appointment and there is no infirmity as such.

11.With these observations, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Secretary to the Government of Tamil Nadu,
Education Department, Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
DPI Building, College Road, Nungambakkam, Chennai.
- 3.The District Educational Officer, Tiruchy.
- 4.The Assistant Elementary Educational Officer,
Manaparai, Tiruchy District.

+1 CC to SPL GP SR-80268.

+1 CC to Mr.J.ANAND KUMAR, Advocate SR-80701.

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