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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.08.2019
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P[MD]No.5619 of 2014
and
M.P.[MD]No.1 of 2014

J.Babu ... Petitioner

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Tuticorin District.

2.The Inspector of Police,
Kayathar Police Station,
Tuticorin District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents resulting in the first respondent's impugned order dated 01.08.2013 issued in Na.Ka.No.A4/33490/2011 and quash the same and direction directing the first respondent to give an appointment to the petitioner under compassionate ground by accepting his application within the time stipulated by this Court.

For Petitioner : Mr.V.R.Venkatesan
For Respondents : Mr.S.Dhayalan
Government Advocate

O R D E R

The order of rejection dated 01.08.2013, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2.The father of the writ petitioner was employed in the respondent Department and died on 08.06.2010, while he was in service. On account of the sudden death of the deceased employee, the family was in penurious circumstances. The writ petitioner was a minor at the time of demise of his father. Thus, there was a delay in submitting the applications. The application submitted before attaining majority cannot be considered as per the terms and conditions of the scheme of compassionate appointment. However, the case of the writ petitioner is to be considered after attaining the age of majority.

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3.The petitioner states that the appointment on compassionate ground can be granted after three years from the date of attaining majority. Such a ground raised is untenable in view of the fact that the very purpose of the appointment is to mitigate the circumstances arising due to the sudden death of the employee. Thus, compassionate appointment can never be claimed as a matter of right. The scheme itself is a concession. The scheme being a concession, the persons who all are deserving alone is to be considered for appointment on compassionate grounds.

4.As per the terms and conditions of the scheme, the application must be submitted within a period of three years from the date of the death of the deceased employee. The applications submitted beyond the period of three years cannot be considered at all. During the relevant point of time, the writ petitioner was a minor and therefore, the claim of the writ petitioner was rejected. This apart, the father of the writ petitioner passed away on 08.06.2010 and the order of rejection was passed in the year 2013. Now after a lapse of 9 years from the date of the death of the employee, the scheme of compassionate appointment cannot be extended in view of the legal principles.

5.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 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*

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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."

6.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."

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7.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.

8.Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Superintendent of Police,
Office of the Superintendent of Police,
Tuticorin District.

2.The Inspector of Police,
Kayathar Police Station,
Tuticorin District.

+1 CC to SPL GP (SR-81173[F] dated 09/08/2019)

W.P[MD]No.5619 of 2014
08.08.2019

MR
MK (16.10.2019) 4P 4C

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