



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2019

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.5943 of 2014

Tmt.Ajitha Rajakumari

... Petitioner

Vs.

1. The Commissioner,
Corporation of Madurai,
Arinamar Anna Maligai,
Madurai-625 002.
2. The Educational Officer,
Corporation of Madurai,
Arinamar Anna Maligai,
Madurai-625 002.
3. The Headmistress,
E.V.R.N.Corporation Higher
Secondary School for Girls,
South Veli Street,
Madurai-625 001.

... Respondents

PRAYER: Writ Petitions under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to consider the petitioner appointment on compassionate basis as per his proceedings dated A3/027732/13 dated 29.08.2013.

For Petitioner : Mr.T.R.Subramanian
For Respondents : No appearance

ORDER

The order of reply, dated 29.08.2013 issued by the second respondent stating that the writ petitioner had not submitted an application seeking appointment on compassionate ground within three years, is the basis for filing of the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the mother of the writ petitioner died on 11.06.1998 and immediately after the death of the mother of the



writ petitioner, she made an application seeking appointment on compassionate ground on 29.07.1998. The said application was acknowledged by the respondents. Though the application was submitted immediately after the death of the deceased employee, the said application was not considered for many years.

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3.The learned counsel for the petitioner states that the petitioner was approaching the authorities frequently in person as well as by submitting various representations, inspite of the approach of the writ petitioner, no action has been taken to provide appointment on compassionate ground. Finally, during the year 2013, the writ petitioner received a reply by stating that the application was not submitted within a period of three years from the date of death of the deceased employee.

4. This Court is of the considered opinion that the application submitted by the writ petitioner was acknowledged by the respondents in proceedings, dated 23.10.1998 itself. Thus, the reasons stated in the reply may not be correct, however, this Court has to consider the case of the writ petitioner now after a lapse of many years for the purpose of providing an appointment on compassionate ground. Undoubtedly, the mother of the writ petitioner expired and the application was also submitted in time. However, the writ petitioner has not pursued her remedy immediately. A person, who is slept over her rights cannot wake up one fine morning and knock the doors of the Court for grant of relief. Such stale claims cannot be entertained by the Courts, more specifically, for the purpose of providing appointment on compassionate ground.

5.The scheme of compassionate appointment is a concession. Thus, the same cannot be claimed as a matter of legal rights. The very purpose and object of the scheme is to mitigate the circumstances arising on account of the sudden death of the Government employee. Therefore, the scheme must be implemented in respect of the legal heirs of the deceased employee within a reasonable period of time and not after a lapse of somany years. The very indigent circumstances arose on account of the death of the deceased employee must be mitigated immediately. Lapse of time is also a ground to draw a factual inference that the indegent circumstances arose became vanished. Thus, the scheme of compassionate appointment cannot be implemented after a lapse of many years. It is not an object of the scheme to provide one Government appointment to one legal heir of the deceased employee. The very purpose and object is entirely different and the scheme cannot be extended after a lapse of many years.

6.The legal principles regarding providing of appointment of many years had already been decided by the

<https://hccourts.gov.in/services/>



Hon'ble Supreme Court in recent two judgments and those two judgments are referred hereunder:-

7. 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."



8. 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."

7. In view of the legal principles settled, the case of the writ petitioner cannot be considered as the mother of the writ petitioner expired in the year 1998 and now after a lapse of 21 years, the appointment cannot be provided to the writ petitioner. This apart, the writ petitioner is now aged about 42 years and over aged. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Commissioner,
Corporation of Madurai,
Arinananar Anna Maligai,
Madurai-625 002.

2. The Educational Officer,
Corporation of Madurai,
Arinananar Anna Maligai,
Madurai-625 002.

+1 CC to Mr.T.R.SUBRAMANIAN, Advocate (SR-78049[F] dated
26/07/2019)

W.P. (MD) No.5943 of 2014
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