



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.15278 of 2015

M.Mohamed Sathardeen

... Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Assistant Commissioner (Labour-Gen),
Madurai Corporation,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent vide letter Ref.Lr.No.Ma Ni4/019420/14 dated 22.07.2014 and quash the same as illegal and consequently to direct the respondents to appoint the petitioner on compassionate grounds in any eligible post within the time stipulated by this Court.

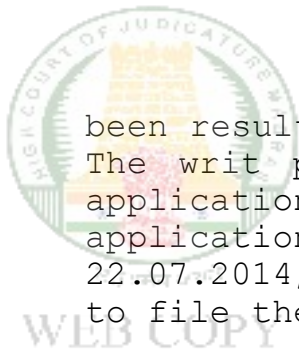
For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.R.Murali

O R D E R

The order of rejection dated 22.07.2014, 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 who was employed as Night Watchman in Madurai Corporation Hospital in West Gate died during the year 1976, when he was in service. During the relevant point of time, the writ petitioner was an employee and accordingly not submitted an application seeking appointment on compassionate ground. Even learned Counsel for the writ petitioner is unable to establish whether any application was submitted within a period of three years from the date of the death of the deceased employee or not.

3.However, learned Counsel for the writ petitioner states that the Commissioner has referred the application during the year 2006 and made a recommendation. However, that recommendation also had not



been resulted with an order of appointment on compassionate grounds. The writ petitioner also waited for number of years and a fresh application was submitted in the year 2002 and based on that application the order of rejection was passed in proceedings dated 22.07.2014, which provided a cause of action for the writ petitioner to file the present writ petition.

4.Thus, the cause of action originally arose on account of the death of the deceased employee during the year 1976 had been reopened by filing a fresh representation and based on the rejection passed in the year 2014.

5.This Court is of the considered opinion that closed cause of action cannot be reopened after a lapse of many year. Even in case many representations were submitted by the writ petitioner, that would not provide a cause of action for the purpose of claiming compassionate appointment, now after a lapse of about 43 years. The deceased employee passed away during the year 1976 and now after a lapse of 46 years from the date of the death of the deceased employee, the writ petitioner cannot claim compassionate appointment. The writ petitioner himself is over-aged as he is now 47 years old. Thus, the scheme of compassionate appointment cannot be granted by this Court in view of the legal principles settled.

6.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 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."

7. 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."



8. 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.

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

Sd/-

Assistant Registrar(AD-I)

/TRUE COPY/

Sub Assistant Registrar(CS-)

To

1. The Commissioner, Madurai Corporation, Madurai.

2. The Assistant Commissioner (Labour-Gen),
Madurai Corporation, Madurai.

+1 CC to M/s.R.MURALI, Advocate (SR-78400[F] dated 30/07/2019)

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AM/13.08.2019/4P/4C