



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.15429 of 2015

P.Swaminathan

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Production and
Distribution Ltd., TANGEDCO, Chennai.

2. The Superintending Engineer,
Tamil Nadu Electricity Board, TANGEDCO,
Trichy Electricity Distribution Circle,
Trichy - 20.

3. The Assistant Engineer,
Manachanallur West Division,
Manachanallur, Trichy 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 relating to the impugned order of the second respondent made in Ka.No.007063/125/Ni.Pi.1/E.Ni.Oo/Ko/Va.Ve/2015 dated 15.05.2015 and to quash the same as illegal and arbitrary and consequently direct the respondents herein to appoint the petitioner herein in any suitable post based on his educational qualification on compassionate ground.

For Petitioner	: Mr.M.O.Thevan Kumar
For Respondents	: Mr.S.Dhayalan Government Advocate

O R D E R

The order of rejection dated 15.05.2015, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2.The learned Counsel for the writ petitioner states that the
<https://hcservices.ecourts.gov.in/hcservices/>



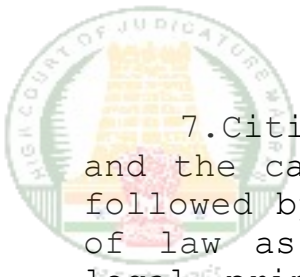
father of the writ petitioner Thiru.Ponnusamy was employed as Mastoor with the third respondent and died on 09.11.2011, while he was in service. Soon after the death of the father of the writ petitioner, he made an application seeking appointment on compassionate ground. However, the said application was rejected in proceedings dated 15.05.2015, on the ground that the writ petitioner was over aged as he crossed the maximum age limit of 35 years.

3.Attacking the order impugned, learned Counsel for the writ petitioner states that in the case of one Smt.R.Sumathilaga, the appointment was provided at the age of 46. Citing the said order, the learned Counsel for the writ petitioner states that when the case of 46 year old women is considered for appointment, the name of the writ petitioner also must be considered.

4.Learned Government Advocate appearing on behalf of the respondents contended that in respect of widows, the appointment can be provided up to the age of 55 years as per the terms and conditions of the scheme on compassionate appointment. Such age relaxation is already granted on in respect of the widows. However, these facts can be verified and if any illegality has been committed by the officials concerned, then all suitable actions are to be initiated in this regard.

5.This Court is of the considered opinion that the scheme of compassionate appointment is to be implemented strictly in accordance with the terms and conditions. The authorities competent must scrupulously follow the terms and conditions. The scheme being the special one cannot be granted in violation of the terms and conditions. The scheme being the concession can never be claimed as a matter of right. The very purpose of the scheme is to mitigate the circumstances occurred on account of the sudden death of the employees.

6.In the present case, admittedly, the writ petitioner even at the time of filing of the writ petition was aged about 44 years and now he would be around 49 years old. Thus, at the time of rejection, the writ petitioner was about 44 years and undoubtedly, over aged. The age relaxation granted in respect of the widows of the employees cannot be compared with the other legal heirs of the deceased employees. However, all these factors are to be verified and if any illegality is found, the same is to be viewed seriously. Even in the case on hand, if there is any such illegality by the respondent, the Court cannot follow or issue directions to continue such illegalities. A wrong precedence set by some authorities cannot be a ground for the purpose of continuing the said precedence.



7. Citing one case, the writ petitioner cannot seek appointment and the case cited even if granted illegally, the same cannot be followed by the Courts and the Courts are bound to follow the rule of law as well as the terms and conditions stipulated and the legal principles settled by the Constitutional Courts in this regard.

8. Admittedly, the writ petitioner had crossed 44 years, even at the time of passing of the impugned order. Now he is about 49 years old. Thus, the claim of the writ petitioner cannot be implemented in view of the legal principles settled, now after a lapse of so many years.

9. 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."



10. 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:-

WEB COPY "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."

11. 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.



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

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

To

1. The Chairman,
Tamil Nadu Electricity Production and
Distribution Ltd., TANGEDCO, Chennai.
2. The Superintending Engineer,
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Trichy Electricity Distribution Circle,
Trichy - 20.
3. The Assistant Engineer,
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Manachanallur, Trichy District.

+1 CC to M/s.M.O.THEVAN KUMAR, Advocate (SR-78359[F] dated
30/07/2019)

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29.07.2019

MR

AE/ (21.08.2019) 5P 5C