



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. [MD]No.7719 of 2014

and

M.P. [MD]Nos.1 & 2 of 2014

N.Rengarasu

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The Director of Elementary Education,
College Road, Chennai - 600 006.

4.The District Educational Officer,
Lalgudi, Tiruchirappalli District.

5.The District Elementary Educational Officer,
Sethurampillai Colony,
Tiruchirappalli District.

6.The Assistant Elementary Educational Officer,
Mannachanallur, Trichirappalli District.

7.The Commissioner,
Mannachanallur Panchayat Union,
Trichirappalli 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 issued by the fourth respondent District Educational Officer in O.Mu.No.1613/A1/2013 dated 10.10.2013 and quash the same and further direct the respondents to provide with a suitable employment to the petitioner on the ground of compassionate.



For Petitioner : Mr.P.Muthuvel
For M/s.Isaac Chambers
For Respondents 1 to 6 : Mrs.S.Srimathy
Special Government Pleader
For Respondent No.7 : Mr.R.Anandha Raj

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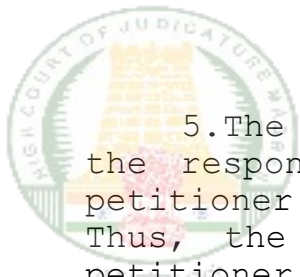
O R D E R

The order of rejection dated 10.10.2013, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2.At the time of filing of the present writ petition, the petitioner was aged about 44 years and now he would be around 49 years. First of all, the petitioner is over-aged as of now. As far as the merits part of the case is concerned, the father of the writ petitioner Thiru.S.Narayanasamy, was employed as Pre-Vocational Instructor and died on 08.01.1976, while he was in service.

3.Learned Counsel for the petitioner made a submission that the mother of the writ petitioner initially submitted an application seeking compassionate appointment. The application was duly forwarded and recommended. However, the same was not considered and no appointment was provided to the family of the deceased employee. During the relevant point of time, the writ petitioner was a minor and thus, he attained majority and thereafter submitted an application on 14.04.1988, seeking appointment on compassionate grounds, after a lapse of 12 years from the date of the death of the deceased employee. The said application was rejected through the impugned order dated 10.10.2013, stating that the application was submitted after a lapse of many years. In this regard, the learned Counsel for the petitioner submitted that the application was duly recommended by the competent authorities and they ascertained that the form submitted by the writ petitioner was in accordance with the terms and conditions and in spite of the recommendation, no appointment order was issued within a reasonable period of application.

4.The specific grievance of the writ petitioner is that the recommendations made by the Assistant Elementary Education Officer, concerned was not duly considered by the District Educational Officer. It is a fault on the part of the Department and therefore, the writ petitioner cannot be penalised. Under these circumstances, learned Counsel for the petitioner states that at least one more chance ought to have been provided to the writ petitioner and no such opportunity was provided. Thus, he is constrained to move the present writ petition.



5.The learned Special Government Pleader appearing on behalf of the respondents opposed the contention by stating that the writ petitioner submitted the application after a lapse of 12 years. Thus, the application itself was belated. This apart, the writ petitioner was not appointed by the competent authority during the relevant point of time and at this length of time, the case of the writ petitioner cannot be considered by this Court.

6.Compassionate appointment is a concession. Thus, the same cannot be claimed as a matter of legal right. Appointment on compassionate ground is to be directed within a reasonable period of time from the date of death of the deceased employee. After a lapse of many years, the scheme of compassionate appointment cannot be extended. The compassionate appointment being the concession cannot be provided after a lapse of many years. Equal opportunity in public employment is a constitutional mandate. No selection process is conducted for appointing persons on compassionate ground. No merit assessment is made. No rule of reservation is followed. Such special concession should be given in a restricted manner so as to provide equal opportunity to all the persons who all are aspiring to get public employment. In the constitutional mandate of enlarging the scope of compassionate appointment all other eligible candidates are infringed. After a lapse of many years, compassionate appointment cannot be granted in violation of the terms and conditions.

7.This being the scope of the scheme, the writ petitioner admittedly was a minor during the relevant point of time, when his father died. He submitted an application after a lapse of 12 years from the date of the death of his father.

8.The father of the writ petitioner died in the year 1976 and he submitted application on 14.04.1988 and the impugned order was passed on 10.10.2013 and the writ petition is taken up for final hearing in the year 2019, after a lapse of 5 ½ years from the date of filing of the writ petition.

9.At the outset, four decades and three years lapsed. The writ petitioner also is aged about 49 years. Thus, absolutely, there is no scope for providing appointment to the petitioner on compassionate grounds. The writ petitioner is already over-aged and 43 years lapsed from the date of the death of the deceased employee. This being the factum, the writ petitioner cannot be considered for appointment on compassionate grounds, in view of the legal principles 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:-

"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.

12. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Director of Elementary Education,
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6.The Assistant Elementary Educational Officer,
Mannachanallur, Trichirappalli District.

7.The Commissioner,
Mannachanallur Panchayat Union,
Trichirappalli District.

+1 CC to M/s.XAVIER RAJINI, Advocate (SR-80192[F] dated
07/08/2019)

+1 CC to M/s.SPL GP (SR-80270[F] dated 07/08/2019)

W.P[MD]No.7719 of 2014
06.08.2019

mr
JM/28.08.2019/6P/10C