



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.8755 of 2014
and
MP (MD) .No.1 of 2014

M.Mohamed Musthaba

... Petitioner

-Vs-

1.The Tamil Nadu Generation and
Distribution Corporation Limited,
Represented by its Chairman cum Managing Director,
Chennai.

2.The Superintending Engineer,
Madurai Electricity Distribution Circle,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order, dated 18.04.2013, in reference No.உநிஅ/மபிவ/நி.மே/நிபி2/உத3/கோ.வா.வே/அ.எண். 120/2013 by the second respondent and to quash the same and consequentially direct the second respondent to appoint the petitioner in a suitable post.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.S.Dhayalan
Standing counsel

ORDER

The order of rejection, dated 18.04.2013, 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 as Filed Assistant in Tamil Nadu Electricity Board and died on 28.09.2001, while he was in service. The mother of the writ petitioner initially submitted an application on 01.07.2002, seeking

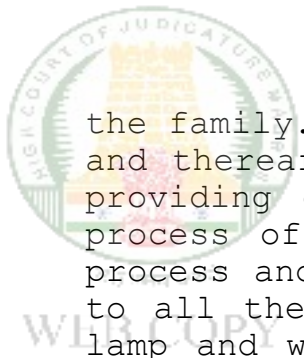


appointment on compassionate grounds. The application of the mother of the writ petitioner was rejected by the Board on the ground that she is not possessing the requisite qualification for appointment in any of the posts in the Tamil Nadu Electricity Board.

3.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was a minor. During the relevant point of time, when his father died and thereafter attaining the age of majority, the writ petitioner submitted an application seeking appointment. The said application was rejected by the respondent on the ground that the application was not received within a period of three years from the date of death of the deceased employee. The learned counsel for the writ petitioner states that the period of three years is to be reckoned from the date of attaining the age of majority and not from the date of which, the employee died. This apart, it is contended that it is a continuing cause and therefore, the appointment cannot be denied merely on the ground that the application was submitted after a period of three years and after attaining the age of majority. The very same ground was elaborately adjudicated by this Court in number of judgments.

4.Compassionate appointment is a concession. Thus, the same cannot be claimed as a matter of legal right. The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death of the Government employee. Thus, the very object is to provide one appointment to the legal heir of the deceased employee, the scheme is to save the family in distress and not to provide one appointment to the legal heir of the deceased employee. Thus, the scheme cannot be extended after a lapse of so many years. The compassionate appointment is to be provided within a reasonable period of time and cannot be provided after a lapse of many years. Equal opportunity in public employment is the constitutional mandate. No merit assessment is to be made. No selection process is conducted. Rule of reservations has not been followed. Mere death of a Government servant provides a public appointment to the legal heir. Thus, the appointment on compassionate grounds being a special scheme, must be implemented strictly in accordance with the terms and conditions and the authorities while undertaking the process of appointment on compassionate grounds must ensure that the appointments are to be made within a reasonable period of time and to assess the suitability of the candidate and more specifically to save the penurious circumstances of the family of the deceased employee within a reasonable period of time.

5.The Hon'ble Supreme Court of India held that the terminal and pensionary benefits raising as well as the pension being disbursed to the spouse of the deceased employee is also taken into account for the purpose of overcoming the penurious circumstances of



the family. Thus, the suitability of the claim is to be ascertained and thereafter, only the appointment is to be made in the event of providing opportunity on compassionate grounds. Undoubtedly, the process of selection is to be made only through open competitive process and equal opportunity in public employment must be provided to all the eligible candidates who all are burning their midnight lamp and working hard for securing public employment through open competitive process and equally query mandate of the constitution must be scrupulously followed by the authorities concerned while extending the benefit of such special schemes.

6. Under these circumstances, the father of the writ petitioner in the present case died on 28.09.2001 and the mother of the writ petitioner submitted an application on 01.07.2002 and the said application was rejected. There is no provision to submit the second application seeking appointment on compassionate grounds. However, the second application by the writ petitioner was submitted on attaining the age of majority and after a lapse of three years from the date of death of his father. Now 18 years hence lapsed. Under these circumstances, the writ petitioner is not entitled to avail the benefit of the scheme of compassionate appointment.

7. 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. Dependents 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,

<https://hcservices.ecourts.gov.in/hcscases> 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."

8. 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."



W.P.(MD).No.8755 of 2014

9. In view of the above legal principles already settled by the Hon'ble Supreme Court of India, the writ petitioner is not entitled for appointment on compassionate grounds, after lapse of so many years. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

+1 CC to Mr.T.R. JEYAPALAM, Advocate SR-82710.

W.P. (MD) .No.8755 of 2014
20.08.2019

CS(05.09.2019) 5P 2C