



WEB COPY

W.P.[MD]No.19847/15

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.[MD]No.19847 of 2015

and

M.P.[MD]No.1 of 2015

R.Sivaranjani

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 9.

2.The District Collector,
Madurai District, Madurai.

3.The Tahsildar,
Madurai West,
Madurai.

... 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 dated 20.02.2014 issued by the first respondent in Government Letter No.20986/Employment - 9(2)/2011-4 and quash the same as illegal and to direct the respondents 1 & 2 to appoint the petitioner on compassionate ground for the department of Revenue.

For Petitioner : Mr.D.Malaichamy
For Respondents : Mr.D.Muruganantham
Additional Government Pleader

O R D E R

The order of rejection dated 20.02.2014, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2.Learned Counsel appearing on behalf of the writ petitioner states that the father of the writ petitioner Thiru.Rajendran, was employed as Village Administrative Officer and died on 22.09.1992. Soon after the death of the father of the writ petitioner, the mother of the writ petitioner submitted an application seeking appointment on compassionate grounds on 12.10.1992. However, the said application was rejected on 17.12.2014.

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



3. During the relevant point of time, the writ petitioner was a minor and even at that point of time, the mother of the writ petitioner submitted application on behalf of the minor on 19.04.1996 to provide appointment. However, the said application was kept pending and again on attaining majority, the writ petitioner submitted a fresh representation on 16.08.2010. The said representation also was not considered and the writ petitioner was constrained to file W.P.[MD]No.5336 of 2011 and this Court passed an order on 29.04.2011, directing the authorities to consider the representations submitted by the writ petitioner.

4. Pursuant to the directions, the impugned order has been passed in proceedings dated 20.02.2014, rejecting the claim of the writ petitioner on the ground that the application itself was filed after a lapse of three years. Further, the Rule did not permit to provide appointment after a lapse of so many years.

5. Learned Additional Government Pleader on behalf of the respondents disputed the contentions of the writ petitioner by stating that the deceased employee passed away in the year 1992. The mother submitted an application and the same was rejected. On attaining majority in the year 2010, again an application was submitted. The said application was considered and rejected on the ground that the application itself was belated and after a lapse of many years from the date of the death of the deceased employee, appointment cannot be provided.

6. There is no provision to entertain a second application on compassionate grounds. Rightly, the first application was submitted by the mother of the writ petitioner during the year 1992, more specifically, immediately after the death of the deceased employee. However, the application was rejected on the ground that the certificates produced by the mother of the writ petitioner was not genuine. However, the said rejection order was not challenged by the mother of the writ petitioner during the relevant point of time. Contrarily, the second application was filed in the year 1996 and at that point of time, the writ petitioner was a minor. A fresh application was submitted in the year 2010. Thus, there is an enormous delay in pursuing the remedy and more specifically, the writ petitioner attained majority and submitted application only in the year 2010.

7. This Court is of the considered opinion that compassionate appointment is a concession and a special scheme. Thus, the scheme of compassionate appointment can never be claimed as a matter of legal right. All appointments are to be done strictly in accordance with the terms and conditions of the recruitment rules



appointment is to mitigate the circumstances arising on account of the sudden death of a Government employee. Thus, the scheme is to be extended within a reasonable period of time, if there is an enormous delay in providing an appointment, then the factual inference is to be drawn and that the penurious circumstances arose, on account of the death of a Government employee became vanished. Thus, the compassionate appointment cannot be provided after a lapse of many years. It is not as if one appointment is to be provided to the legal heirs of the deceased employee.

8. Large number of appointments on compassionate ground will result in inefficiency in public administration. The scheme of compassionate appointment is a special scheme and is in violation of Article 14 and 16 of the Constitution of India. The constitutional rights of all other eligible candidates, who are all aspiring to secure public employment. Therefore, open competitive process are conducted. Thus, the scheme is to be implemented in a restricted manner so as to ensure that the constitutional principles of equality are maintained in the matter of providing public employment.

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:-

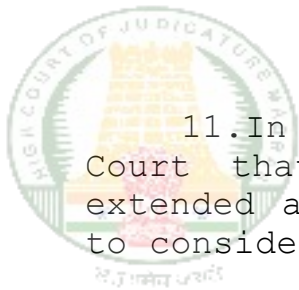
"18. While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. 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, 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 at this point of time.

12. Accordingly, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai - 9.

2. The District Collector,
Madurai District,
Madurai.

3. The Tahsildar,
Madurai West,
Madurai.

+1 CC to MR.D.MALAICHAMY, Advocate SR-78788.

+1 CC to SPL GP SR-78876.

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CS(14.08.2019) 5P 6C