



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**W.P.(MD)No.22971 of 2015

V.Menaga

... Petitioner

-Vs-

1.The Director of School Education,
O/o. Directorate of School Education,
College Road, Chennai.

2.The Joint Director of Primary Schools,
Directorate of Primary Schools,
College Road, Chennai.

3.The District Chief Educational Officer,
Thanjavur District, Thanjavur.

4.The Assistant Primary Educational Officer,
Sethupavachatram, Kuruvikkarambai,
Thanjavaru District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the 3rd respondent's proceedings in O.Mu.No.05919/A1/2010, dated 15.10.2010 and quash the same and consequently, to direct the respondents to consider the petitioner's application, dated 12.10.2010 and to provide compassionate appointment to the petitioner.

For Petitioner

: Mr.P.Muthusamy

For Respondents

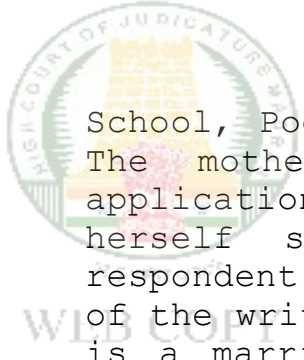
: Mrs.S.Srimathy,

Special Government Pleader.

ORDER

The order of rejection, dated 15.10.2010, rejecting the claim of the writ petitioner on the ground that the married daughters of the deceased employee, are not eligible to avail the benefit of the scheme of compassionate appointment.

2.The learned counsel appearing on behalf of the writ petitioner states that the father of the writ petitioner, Vellaichamy was employed as Headmaster at Panchayat Union Primary



School, Poovanam and died on 09.06.2006, while he was in service. The mother of the writ petitioner initially submitted an application on 07.10.2009 and thereafter, the writ petitioner herself submitted an application on 12.10.2009. The third respondent passed an order dated 15.10.2010, rejecting the claim of the writ petitioner on the ground that the writ petitioner, who is a married daughter, is not eligible to avail the scheme of compassionate appointment.

3.The learned Special Government Pleader appearing on behalf of the respondents opposed the contentions by stating that during the relevant point of time, the married daughters were not eligible for appointment on compassionate grounds. Now, after a lapse of 13 years from the date of the death of the deceased employee, the scheme of compassionate appointment cannot be extended.

4.It is relevant to consider the basic facts placed in the present Writ Petition. The father of the writ petitioner passed away on 09.10.2006 and the mother of the writ petitioner submitted an application on 07.10.2009 and the writ petitioner submitted an application on 12.10.2009. The impugned order has been passed on 15.10.2010 and the Writ Petition itself was filed on 16.12.2015, after a lapse of 5 years from the date of passing of the impugned order. Thus, the writ petitioner has not pursued her remedy and she slept over his right regarding the scheme of compassionate appointment. The writ petitioner even at the time of death of her father, was married and at the time of filing of the Writ Petition, she was aged about 34 years and now, she would be around 39 years. Under these circumstances, this Court has drawn factual inference that the family of the writ petitioner is not in penurious circumstances. It is not as if one appointment to be provided to the family of the deceased employee. The scheme of compassionate appointment has got a definite purpose and object. The scheme is to be implemented to mitigate the circumstances arising on account of the sudden death of the Government Employee.

5.This being the very purpose and object, the scheme cannot be extended, in a case, where there is enormous delay and in the cases, where the delay occurred at the instance of the writ petitioner. In the present case on hand, even the impugned order passed in the year 2010 is under challenge, after a lapse of 5 years. Thus, the Writ Petition is liable to be rejected on the ground of laches.

6.As far as the delay is concerned, the Hon'ble Supreme Court of India also held that the scheme of compassionate appointment cannot be granted, after a lapse of many years. To <https://hcservices.gov.in/hcservices/> penurious circumstances, terminal and pensionary benefits as well as family pension being paid are also taken into consideration.



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, 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."

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."

9. In view of the facts and circumstances as well as the legal principles, the writ petitioner is not entitled for the relief of compassionate appointment. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

To

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4.The Assistant Primary Educational Officer,
Sethupavachatram, Kuruvikkarambai,
Thanjavaru District.

+1 CC to M/s.P.MUTHUSAMY, Advocate (SR-75355[F] dated
16/07/2019)

+1 CC to M/s.SPL GP (SR-75214[F] dated 15/07/2019)

MYR

W.P. (MD) No.22971 of 2015
12.07.2019

KM/ (23.07.2019) 5P 7C