



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.3603 of 2015

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... Petitioner

-Vs-

1.The Secretary to Government,
Social Welfare & Noon Meal Project Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2.The Director,
Social Welfare & Noon Meal Project,
Chepauk, Chennai-600 005.

3.The District Collector,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in Lr.No.1359/SaNa.4-2/2015-1 dated 07.02.2015 quash the same and consequently, direct the respondents herein to post the petitioner on compassionate appointment as per the G.O.Ms.No.198, Social Welfare & Nutritious Meal Project (NMPS2) Department, dated 25.10.2007.

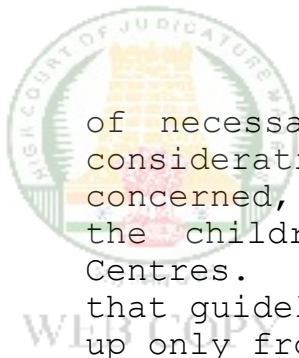
For Petitioner : Mr.K.Appadurai
For Respondents : Mr.S.Dhayalan,
Government Advocate.

ORDER

The order of rejection, rejecting the claim of the writ petitioner for appointment to the post of Noon Meal Organizer on compassionate ground, is under challenge in the present Writ Petition.

2.The mother of the writ petitioner was an employee in the Noon Meal Scheme and died on 10.01.2007, while she was in service. The writ petitioner submitted an application on 13.06.2007 to provide appointment on compassionate ground.

3.The learned counsel appearing on behalf of the writ petitioner states that the Government issued G.O.Ms.No.198, Social Welfare and Nutritious Meal Project (NMPS2) Department, dated 25.10.2007, stating that even at the time of considering the cases for compassionate appointment, if necessary, proposal for relaxation



of necessary rules shall be submitted before the Government for consideration. As far as the post of Noon Meal Organizer is concerned, female candidates are preferred by the Government, since the children below 5 years are to be maintained in Noon Meal Centres. Thus, the Department of Social Welfare is also following that guidelines that the post of Noon Meal Organizer is to be filled up only from amongst the qualified and eligible female candidates.

4.This Court is of opinion that the Government Order issued with general terms cannot be claimed as a matter of legal right by the writ petitioner. The writ petitioner seeks appointment on compassionate ground on account of death of his mother during the year 2007. The post of Noon Meal Organizer was filled up and a female candidate was appointed.

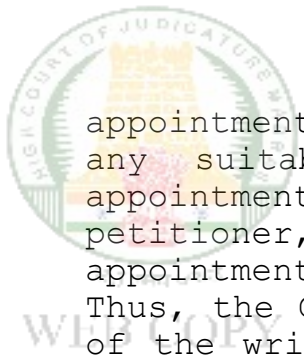
5.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is though a male candidate, he is fully qualified for appointment to the post of Noon Meal Organizer and his case is to be considered by relaxing the relevant rules as per the Government Order issued in G.O.Ms.No.198.

6.Such a relaxation is an administrative prerogative of the Government. The Court cannot issue any orders or directions to grant relaxation of relevant rules in force. As per the rules, female candidates are more suitable to the post of Noon Meal Organizer, in view of the fact that in Noon Meal Centres, children below 5 years are to be maintained. The Government also thought fit that the female candidates will be more suitable to monitor the Noon Meal Centres, wherein the children below 5 years are provided noon meal as well as other facilities.

7.This being the decision of the Government, this Court cannot interfere with such a policy decision. The writ petitioner, who seeks appointment on compassionate ground, cannot insist nor seek for a direction from this Court that his case is to be considered by granting necessary relaxation of the recruitment rules in force. Relaxation is an exception. Thus, the Court cannot issue any direction to relax the rules in force in favour of a particular person for the purpose of providing appointment.

8.Beyond the ground that the female members are found more suitable by the Government, the learned counsel appearing on behalf of the writ petitioner states that subsequent Government Orders notified that the male members also get appointment as Noon Meal Organizers.

9.This Court is not inclined to go into the merit of the said contention, in view of the fact that the writ petitioner claims appointment on compassionate ground. Therefore, the said contention may not have much significance in the present case. Compassionate



appointment is a scheme, wherein a person can seek appointment in any suitable post. Thus, the writ petitioner cannot seek appointment in a particular post alone. Thus, the case of the writ petitioner, if at all he is eligible, must be considered only for appointment in any suitable post and not in the Noon Meal Organizer. Thus, the Government Orders may not be relevant, as far as the case of the writ petitioner is concerned, in view of the fact that the writ petitioner claims appointment on compassionate ground and not for any suitable post and he cannot seek appointment to a particular post.

10. This apart, the mother of the writ petitioner died in the year 2007 and even at the time of filing of the Writ Petition, the writ petitioner was aged about 37 years and now, he would be around 41 years. Thus, he is over aged and his claim cannot be considered at this length of time. However, the impugned order itself was passed, pursuant to the directions issued by the Court in respect of the Writ Petition filed by the writ petitioner during the year 2012. However, 12 years lapsed. Under these circumstances, the scheme of compassionate appointment cannot be extended in favour of the writ petitioner, in view of the legal principles settled by 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, wherein it has been held 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

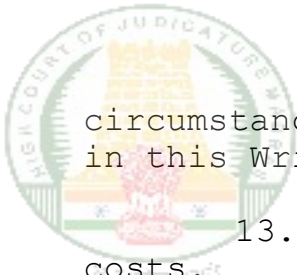


the application in accordance with the terms and conditions which are prescribed by the State."

11. In the case of **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."

12. Under these circumstances, the reasons stated in the impugned order are undoubtedly candid and convincing and there is no infirmity as such. The policy decision of the Government to appoint the female candidates in Noon Meal Centres, wherein the children below 5 years are maintained, has got a reasoning. Under these



circumstances, the relief of compassionate appointment as sought for in this Writ Petition cannot be granted.

13. Accordingly, this Writ Petition stands dismissed. No costs.

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Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Secretary to Government,
Social Welfare & Noon Meal Project Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2. The Director,
Social Welfare & Noon Meal Project,
Chepauk, Chennai-600 005.

3. The District Collector,
Theni District.

+1 CC to Mr. K. APPADURAI, Advocate SR-83709.

+1 CC to SPL GP SR-83983.

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