

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.11656 of 2020

T.Sowmiya

... Petitioner

vs.

1. The Director,
Public Health & Preventive Medicine,
Chennai-600 006
2. The Joint Director (Administration),
Public Health & Preventive Medicine,
Chennai-600 006
3. The Assistant Director of Public Health,
Thanjavur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent herein in his proceedings in Na.Ka.No.146/A3/2011, dated 12.12.2018 and quash the same and consequently direct the first respondent herein to consider the petitioner's representation dated 24.01.2019 with regard to compassionate appointment in the light of the proceedings of the second respondent herein in Na.Ka.No.70367/Estt.4/2015/Iru.3, dated 19.01.2016, within a time frame.

For Petitioner : Mr.G.Bala and Daisy
For Respondents : Mr.R.A.S.Senthilvel,
Additional Government Pleader

ORDER

The matter is taken up through web hearing.

2. According to the petitioner, her mother was working as a Village Health Nurse and died in harness on 27.02.2005. She left behind the petitioner and her another sister and her father, as legal heirs. According to the petitioner, before her death her mother had rendered 23 years of continuous service.

3. On the death of her mother, the petitioner's father originally submitted an application on 10.10.2007, requesting for 'compassionate appointment' for himself. According to the petitioner, that request for compassionate appointment was not processed at all, as there was no action forthcoming in response to such application by her father.

4. On 21.06.2010, a further application was submitted by the petitioner herself requesting for her appointment on compassionate ground. Along with the application, her father and another sister had also submitted their no objection letters. According to the petitioner, thereafter, further correspondences were exchanged and finally she submitted a representation dated 21.07.2015 to the second respondent requesting the status of her claim for compassionate appointment. Thereafter, the second respondent, by his proceedings dated 19.01.2016 informed the petitioner that her name has been kept in the waiting list at No.521(a) in the order of seniority for compassionate appointment. As the petitioner was waiting for further information and eventual appointment, she was informed on 12.12.2018 that her application for compassionate appointment could not be considered, as there was no provision for consideration of the second candidate in the same family in view of the fact that her father originally applied earlier. The order dated 12.12.2018 rejecting the request of the petitioner for compassionate appointment is put to challenge in the writ petition.

5. The learned counsel appearing for the petitioner submitted that the reason set forth in the impugned order is not sustainable for the reason that it is contrary to the legal principle laid down by this Court in P.Sathiraman vs. Secretary to Government (2013(8) MLJ 190), wherein this Court has held that when minor children attain majority, their names may be considered in the place of father/mother within the stipulated time limit. The learned counsel has also relied on an order in another writ petition in W.P.No.22579 of 2015, wherein it was held that while the claim of the spouse for compassionate appointment was under consideration, it can be substituted by the children of the deceased Government Servant and the same cannot be rejected on technical grounds. The learned counsel also submitted that the claim is covered under the doctrine of 'legitimate expectation'. Therefore, the learned counsel would submit that the rejection of the petitioner's request for compassionate appointment is contrary to the legal principles and therefore, the same may have to be interfered with.

6. This Court may not have any quarrel over the legal principles laid down by this Court as relied on by the learned counsel for the petitioner. However, the fact of the matter is

that the petitioner's mother was employed as Village Health Nurse and died as early as on 27.02.2005. It has been 15 years now and a member of the family of the deceased is still staking a claim for compassionate appointment. This Court time and again has reasoned that the scheme of compassionate appointment is meant to provide immediate employment assistance to the family of the deceased to circumvent the sudden crisis engulfing the family, but such offer of employment under the scheme cannot be kept waiting for years to come.

7.This Court cannot lose sight of the fact that normally father is the head of the family and in this case, it can reasonably be presumed that with the assistance and care of the father, the family has managed to survive for 15 years. Therefore, the claim for 'compassionate appointment' cannot be a matter of legacy for inheritance, as it can be sought and obtained at any time.

8.Even though the reasons stated in the impugned order may be contrary to the legal principles laid down by this Court, yet this Court finds that passage of long time from the date of death of the Government servant itself is a bar for any claim by the legal heirs of the family. Unfortunately, the respondent, who rejected the claim, did not address this issue at all, as the authorities are sometimes oblivious to certain crucial issue when it comes up for their decision. However, this Court cannot consider the reasons stated in the impugned order and over turn the decision in favour of the petitioner, as this Court can always substitute its own reasons for not acceding to the request of the petitioner.

9.In such circumstances, this Court is of the view that the claim of the petitioner, at this distance of time, is without any merits and hence, the writ petition is dismissed. No costs.

-s/d-
सत्यमेव जयते

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Director,
Public Health & Preventive Medicine,
Chennai-600 006

2.The Joint Director(Administration),
Public Health & Preventive Medicine,
Chennai-600 006

3.The Assistant Director of Public Health,
Thanjavur.

+1cc to the Government Pleader, High Court, Madras
in SR no.28350, dt:31.08.2020

W.P.No.11656 of 2020

MR(CO)
RV(17/09/2020)



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