

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.33091 of 2016

Kalyani

..Petitioner

Vs

- 1.The Secretary,
Represented by its Principal
Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 600 009.
- 2.The Joint Commissioner
Revenue Administration,
Chepauk, Chennai - 600 005.
- 3.The District Collector, Karur District, Karur.
- 4.The Revenue Divisional Officer, Karur District.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the fourth respondent to issue suitable orders for the appointment of petitioner's son Mr.Boopathy Raja in a suitable post on the basis of his qualification in the Revenue Department on compassionate ground within the time frame as fixed by this Court.

For Petitioner : Mr.M.Dinesh
For RR 1 to 4 : Mr.J.Ramesh,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking for a direction to the fourth respondent to issue suitable orders for the appointment of petitioner's son Mr.Boopathy Raja in a suitable post on the basis of his qualification in the Revenue Department on compassionate ground within the time frame as fixed by this Court.

2. According to the petitioner, the petitioner's husband namely late.K.Sundararajan, while he was working as Village Assistant in the Revenue Department at Punjai Pugalur Village, Karur District, under the control of the fourth respondent. Thereafter, her husband was met with an accident and died on the spot on 13.11.1996 leaving behind his wife, two minor children. Thereafter, the writ petitioner herein has applied for compassionate appointment for herself on 01.03.1999. Subsequently, she had submitted an application for appointment on compassionate ground to the third respondent through his letter in Na.Ka.No.A1/10206 dated 22.07.2016 requesting him for appointment on compassionate ground has been rejected due to reason that her request for such appointment has been given beyond three years from the date of the death of the Government Servant. Meanwhile, as per the Government Letter in No.4810/Q1/1995-3, Labour and Employment dated 28.02.1995, directing her to submit a representation as and when the Government Orders are issued in this regard. However, the writ petitioner was informed accordingly by the fourth respondent's letter in G.O.(Ms).No.1212 dated 03.03.1999. Thereafter, she neither applied afresh nor send any communication to the authorities as already directed. In the meantime, he attaining the majority of the writ petitioner's son. After a lapse of 17 years i.e., on 07.07.2014, the writ petitioner has applied for appointment on compassionate ground afresh to her son instead of appointment to her. But the aforesaid application has been rejected by the competent authority. Aggrieved against the same, the writ petitioner has filed the present writ petition before this Court.

3. Counter affidavit filed by the third respondent stating that the writ petitioner was informed by the fourth respondent's letter in Oo.Mu.No.1212/1999 dated 03.03.1999 by asking the writ petitioner to submit an application. Therefore, in the light of the Government Letter in No.4810/Q1/1995-3, Labour and Employment, dated 28.02.1995. But the writ petitioner has not submitted any afresh representation or communication to the competent authority. However, the present application submitted on 07.07.2014 is beyond the period of three years from the date of the death of the Government Servant. Therefore, as per the Government Order in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995, orders were issued that the application, for appointment on compassionate ground should be made within three years from the date of death of the Government Servant. The request of the petitioner is contrary to the service rules and the Government orders in force. The averment of the petitioner stating that the Government has a bounden duty to provide appointment to the petitioner's son is denied as false. The authorities have rightly considered the request of

the petitioner and concluded that the claim is a belated one and not eligible for appointment on compassionate grounds. Hence, the aforesaid application has not submitted within a period of three years. Therefore, the respondent has rightly rejected the claim of the writ petitioner for appointment on compassionate grounds. Hence, the respondents pray to dismiss the writ petition.

4. Heard the parties concerned and perused the materials available on record.

5. It is the case of the petitioner is that the writ petitioner's husband namely K.Sundararajan, died on 13.11.1996 leaving behind the writ petitioner and two minor children from the date of the death of the deceased. Therefore, she has submitted her application on 01.03.1999 under the compassionate appointment but thereafter, the aforesaid application was not processed. Subsequently, she was informed by the fourth respondent in Government Letter No.4810/Q1/1995-3, Labour and Employment Department dated 28.02.1995 by directing her to apply afresh as and when the Government Orders are issued in this regard. But, thereafter, the writ petitioner has not submitted any afresh application or send any communication to the fourth respondent.

6. It is an admitted fact that the writ petitioner has submitted the application on 07.07.2014 on behalf of the writ petitioner's son instead of appointment to her. The aforesaid application was submitted to the authorities concerned after a lapse of 17 years on attaining the age of majority of the minor son. According to the writ petitioner, the aforesaid application has been filed by the writ petitioner within three years on attaining the majority of the minor son and also the appointment for compassionate grounds were already been elaborately discussed and decided by this Court in the case of The Inspector General of Prison, Tiruchirapalli District, Tiruchirapalli and Others Vs. P.Marimuthu, reported in 2016 (5) CTC 125 in W.A.(MD).No.329 of 2015, decided on April 22, 2016, wherein it has been held in Paragraph No.35 of the judgment is as follows.-

35. With due respect, decisions made in V.Jaya's case and J.Jeba Mary's case, cannot be considered to be precedents, on the specific issue, as to whether, a minor is eligible to seek for employment assistance on compassionate grounds, on attaining majority, after a long number of years, after the death of the Government servant, de hors the condition that it has to be submitted within three years from the date of death of the Government servant, and when the scheme of employment assistance on compassionate grounds, is to

tide over the financial constraint of the deceased family. The issue to be considered is when the scheme provides for a limitation or a specific period within which, an application for employment assistance has to be made, and how the said period of three years from the date of death of the Government Servant has to be computed, whether a person, who is otherwise not eligible to apply within the said period, on account of age or not satisfying the required qualifications for any post in the service, in which the employee died, can make an application, on attaining majority and whether such application has to be considered irrespective of the period of limitation? On this aspect, this Court deems fit to consider few decisions of the Hon'ble Apex Court.

(ii) In Union of India (UOI) and Others Vs. Bhagwan Singh, reported in 1995(6) SCC 476, a Senior Clerk in Railways died on September 12, 1972, leaving behind his wife, two major sons and the respondent (before the Hon'ble Supreme Court), who was a minor, aged about 12 years. He passed Higher Secondary Examination in 1983. Stating that he had attained majority only in 1980/1981, he sought appointment on compassionate grounds. The same was rejected. The authorities took the view that the application was beyond the period of limitation (five years) and that the case of the respondent was not covered by the relevant rules, at the time of the demise of Ram Singh. Besides, there were two other major sons of the deceased, who did not seek for employment and that the family was not in financial distress. The Central Administrative Tribunal, held that the order of rejection as unjustified and directed Union of India to reconsider the case of the respondent therein, if he was otherwise qualified. Testing the correctness of the order of the Central Administrative Tribunal and taking note of the object behind the grant of special concession of employment assistance on compassionate grounds to provide immediate financial assistance to the family of a Government Servant who dies in harness, the Hon'ble Supreme Court, at paragraph No.8, held as follows:

"8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on September 12, 1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family

and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated February 22, 1993. The appeal is allowed."

(iii) In Haryana State Electricity Board and another Vs. Hakim Singh, reported in 1997 (8) SCC 85, Haryana Electricity Board challenged an order of the High Court of Punjab and Haryana contending inter-alia that the respondent therein was not entitled to be considered for appointment in the Board on compassionate grounds. In the reported case, father of the respondent therein was a Lineman in employment of the Board. He died on 24.8.1974 in harness, leaving behind him, his widow and minor children, including the respondent. About 14 years, after the death of the said Lineman, widow applied for appointment to her son in the Board, on compassionate grounds, based on two circulars. As per the said circulars, one member of the family of the deceased employee could be considered for employment in the service of the Board, as a goodwill gesture, provided the request for such employment is made within one year of the death of the employee. The respondent filed a writ petition in the High Court contending inter-alia that when his father died, he was only four years old and therefore, his mother could make an application in the prescribed form and when he attained majority, he made a request. The Board did not give any favourable response to the repeated representations made in the matter. The Board took a stand that as the application was not made within the period specified in the circulars, the Board was unable to entertain the request for appointment on compassionate grounds. The High Court ordered the Board to consider the case of the respondent therein for compassionate appointment on the ground that, even if the dependents happened to be a minor child, at the time of death of the employee, the policy mandates his case to be considered by an extended period i.e., the time till the defendant attained majority. The Board's appeal was negatived by the Hon'ble Division Bench, with a direction to comply with the orders of the Single Judge, within a time frame. When the correctness of the above said orders was

tested, at paragraph No.8 of the judgment, the Hon'ble Supreme Court held as follows:

"8. The rule of appointment to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

As regards the extended period, on attaining majority, the Hon'ble Supreme Court at paragraph Nos.14 and 15, held as follows:

"14. In that case widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate ground. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court one in Umesh Kumar Nagpal v. State of Haryana and Ors. [1994 (3) SCR 893], the other in Jadgish Prasad v. State of Bihar and Anr. 1996 (1) SCC 301 . In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for the post held by the deceased". In the latter decision which also was rendered by a Bench of two judges, it was observed that "the very object of appointment of dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of earning member of the family". The learned Judges pointed out that if the claim of the dependent which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependent of the deceased government servant "which cannot be encouraged, de hors the recruitment rules."

15. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 1.10.1986. Respondent, if he is interested in getting employment in the Board has to pass through the normal route now."

Ultimately, the Hon'ble Supreme Court set aside the impugned orders of the High Court.

(iv) In Sanjay Kumar Vs. The State of Bihar and Others, reported in 2000 (7) SCC 192, the petitioner was 10 years old, and his mother working as a Excise Constable, died. He made an application on 02.06.1988, soon after the death of his mother, seeking appointment on compassionate grounds. The said application was rejected on 10.12.1996. Fresh application subsequently made was also rejected on 21.04.1997. Being aggrieved by the same, he preferred a writ petition before the High Court. A learned Single Judge dismissed the writ petition and that the same was also confirmed by the Hon'ble Division Bench. On appeal, the Hon'ble Supreme Court, at paragraph No.3, held as follows:

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood: In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and Anr. v. Pushpendra Kumar and Ors. (Supra). It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

(v) In Sushma Gosain v. Union of India reported in 1989 (4) SCC 468, it was observed that in all the claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided

immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Phoolwati v. Union of India [1991 Supp (2) SCC 689] and Union of India v. Bhagwan Singh [1995 (6) SCC 476].

(vi) In Director of Education (Secondary) v. Pushpendra Kumar reported in 1998 (5) SCC 192, it was observed that in the matter of compassionate appointment, there cannot be insistence for a particular post. Out of purely humanitarian consideration, and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

(vii) In Director, Defence Metal Research Laboratory v. G. Murali, reported in 2003(9) SCC 247, the applicant was aged about two years, at the time of death of his father and that his application for compassionate ground appointment made, on attainment of majority was rejected, on the ground of non-availability of posts. The Central Administrative Tribunal, rejected the challenge. However, the High Court directed appointment on compassionate grounds, with a direction to the respondent's therein to create a post to accommodate him. The Civil appeal filed by the Director (Defense) and another, was allowed and at paragraph No.4, the Hon'ble Supreme Court opined as follows:

"4. We do not find any flimsy ground or technicalities in the Tribunal's order. In fact, we find the High Court's order to be unsustainable. There has been a failure to appreciate what the Tribunal had rightly taken into account, namely, that the writ petitioner and his family

had coped without the compassionate appointment for about eighteen years. There was no warrant in such circumstances for directing the writ petitioner's appointment on compassionate grounds and that too with the direction to the respondents to the writ petition to create a post to accommodate him"

(viii) In National Hydroelectric Power Corporation and Anr. Vs. Nanak Chand and Anr., reported in 2004 (12) SCC 487, father of the respondent was working under Hydro Electric Project of Government of India and died on 10.12.1976. The project was handed over to the appellant Corporation in 1978. The respondent, after attaining majority in 1986 applied for compassionate appointment which was rejected on the ground that the application was made after 10 years and that Corporation had surplus staff. Placing reliance on the instructions issued by the Government, contained in Swamy's Complete Manual and Establishment and Administration, the High Court granted the relief in favour of the respondent/dependent. Setting aside the said order, the Hon'ble Supreme Court, after referring to a catena of decisions held that the impugned judgment therein, as unsustainable. The Apex Court further held that the fact that the ward was a minor at the time of death of his father, was no ground to grant compassionate ground appointment, unless the Scheme itself envisages.

(ix) In State Bank of India v. Somvir Singh, reported in 2007 (4) SCC 778, at Paragraphs 7 and 10, the Hon'ble Apex Court held as follows:

"7. Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) Protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

10. There is no dispute whatsoever that the appellant bank is required to consider the request for

compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be." The Hon'ble Supreme Court further held that it is well settled that the hardship of the dependent does not entitle one, to compassionate appointment, dehors the scheme or the statutory provisions, as the case may be.

(x) In *S.Venkateswaran v. The Additional Director, Land Survey and Records Department* [W.P.(MD)No.9086 of 2011, dated 14.09.2011], it is held as follows:

The principles enunciated in the above said judgments would makes it clear that compassionate appointment is not a vested right which can be exercised at any time, in future. Compassionate employment cannot be claimed after a lapse of time, after the crisis is over. On the facts and circumstances of the above case, the Apex Court proceeded to observe that the employee died in harness in the year 1981 and after a long squabble by the dependents of the deceased, they have arrived at a settlement that the son- in-law (husband of the second daughter) who was unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personal Manager of the Company subject to the approval of the Director of the Company. The Director (P) , who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so called dependent of the deceased employee. The Supreme Court held that the decision of the employer was in consonance with *Umesh Kumar Nagpal's* case and the same should not have been interfered with by the High Court.?

(xi) In *Local Administration Department v. M.Selvanayagam* reported in 2011 AIR SCW 2198, an application was made by the son of the deceased, after 7+ years, from the date of death of his father, who died as a Watchman in Karaikal Municipality on 22.11.1988, leaving behind, his wife and two sons, including the

respondent therein. At the time of his death, the respondent therein was aged 11 years. After about 5+ years from the date of his father's death, the respondent therein passed S.S.L.C. examination in April, 1993. Thereafter, for the first time on July, 29, 1993, the respondent's mother therein made an application for his appointment on compassionate grounds. No action was taken on the application, since the respondent therein was still a minor. A learned Single Judge directed the authorities to consider his claim for appointment on compassionate grounds, afresh and to pass an order on his application, within four months, from the date of passing of the order. As the same was not complied with, a contempt proceeding was initiated. The Municipality rejected the respondent's claim therein, for compassionate appointment. Once again, a writ petition was filed and this time, a learned Single Judge rejected the same. The Hon'ble Division Bench, which considered the correctness of the said order, allowed the writ appeal and that the same was challenged before the Hon'ble Apex Court. After considering the scheme of employment assistance on compassionate grounds, at Paragraphs 7 to 9, the Hon'ble Apex Court, held as follows:

"7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganized way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence,

quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

9. In this case the Respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the Respondent did not come under the scheme of compassionate appointments."

7. Though the aforesaid application was submitted by the writ petitioner within the time on behalf of her son namely Boopathy Raja, the contention of the counsel for the writ petitioner cannot be accepted for the reason that the aforesaid decision (cited supra) as applicable to the facts of the present case. Apart from that, the decision of this Court dated 09.12.2013 in W.P.No.33400 of 2013 is not similar to the case of the petitioner and hence, the request of the petitioner to appoint her son on compassionate grounds is not sustainable. The subsequent request of the petitioner to appoint her son instead of her on compassionate grounds after a long delay of 17 years is not reasonable. Therefore, the claim of the writ petitioner is belated and it is contrary to the rules in force. Hence, the contention of the writ petitioner cannot be acceded and there is no merit in the writ petition, consequently the writ petition is liable to be dismissed.

8. Accordingly, the writ petition shall stands dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm
To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Revenue Department, Fort St. George, Chennai - 600 009.
 - 2.The Joint Commissioner, Revenue Administration,
Chepauk, Chennai - 600 005.
 - 3.The District Collector, Karur District, Karur.
 - 4.The Revenue Divisional Officer, Karur District.
- +1 CC to Mr.P. Krishnaveni, Advocate sr 5983.
+1 CC to Govt. Pleader sr 6674.

W.P.No.33091 of 2016

RSV(CO)
SP(04/08/2020)

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