

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.5022 of 2014

M.Durai

.. Petitioner

vs.

1.The General Manager (South)  
Food Corporation of India,  
Zonal Office (South)  
No.3, Haddows Road,  
Chennai 600 006.

2.Area Manager,  
Food Corporation of India District Office,  
Sathyamurthy Road,  
Chennai 600 031

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to quash the impugned order dated 16.08.2013 bearing reference No.E.II/32(4)/2010 passed by the first respondent and consequentially direct the first respondent to appoint the petitioner on compassionate grounds.

For Petitioner : M/S.Roshini Ravikumar

For Respondent(s) : Mr.S.Vijayakumar

ORDER

This writ petition has been filed by the petitioner, for challenging the impugned order dated 16.08.2013 bearing reference No.E.II/32(4)/2010 passed by the first respondent and consequentially direct the first respondent to appoint the petitioner on compassionate grounds.

2.According to the petitioner, his father worked as Dusting Operator, and went missing during his employment on 15.04.1991. As he did not return for nearly seven years, his family members including petitioner herein filed suit in O.S.NO.1962 of 2003

and sought for declaration of his father's death legally, the suit was decreed in favour of the petitioner's family and thereafter, the petitioner approached respondent during the year 2005 for appointment under compassionate ground while annexed the court order declaring the death of his father, however he was directed to provide order of court declaring petitioner as his father's legal heir. Hence the petitioner was constrained to file another suit in O.S.No.1963 of 2005 and the Civil Court decreed the suit in his favour and declared him as his father's legal heir and eligible for terminal benefits and other benefits. The grievance of the petitioner is that despite above efforts taken by the petitioner, the respondents have not considered several representation made by him, for which requesting for compassionate appointment, hence left with no other alternative, the petitioner approached this Court by way filing writ petition in WP.No.16485 of 2013 for considering his representations, this Court by its order dated 20.06.2013, directed the respondents to consider and pass appropriate orders on his representation. In compliance of this Court order, the respondents passed impugned order dated 16.08.2013. Aggrieved against the same, this petition was filed with the above said prayer.

3.Learned counsel for the Petitioner submitted that, as the Petitioner's father went missing during the course of his employment and he could not be found for more than seven years, the Petitioner obtained a decree from the Court that, his father is legally dead. Based on the said decree, the Petitioner made an application to the Respondent to consider his request for compassionate appointment. However, the same was rejected. It is his contention that, when the Court has passed a decree to the effect that, the Petitioner's father is no more, there is no impediment for the Respondents to consider the Petitioner's claim for compassionate appointment.

4.Per contra, learned counsel appearing for the Respondents filed counter affidavit on behalf of respondent and submitted that, appointment on compassionate ground is granted to the legal heir of a deceased employee and that, nowhere in the Scheme, there is a provision to consider appointment on compassionate ground to the legal heir of an employee, who went missing for a long time. He further submitted that, the terminal benefits due to the Petitioner's father have also been settled to his family members.

5.Heard the learned counsel on either side and perused the material documents available on record.

6.The facts in the present case is not disputed one. Admittedly the purpose of providing employment on compassionate basis is to mitigate the hardship of the family which has arisen due to the death of the employee and such appointment therefore has to be provided immediately to ensure that the family tide over the sudden crisis which has arisen due to the death of the employee. The dependent of a deceased employee cannot be permitted to convert a tragedy into a bonanza. If the compassionate appointment is treated as one more source of recruitment, then it will be violative of Article 16 of the Constitution of India. It is settled by various decisions of the Hon'ble Supreme Court, an appointment on compassionate basis is a concession given by the employer to help the family of the deceased who has died in harness to get over the immediate financial crisis. The scheme under which compassionate appointment can be given has to be construed strictly. In the case on hand, it is not known as to whether the Petitioner's father is still alive or not. As he went missing long ago, the Petitioner approached the Court and obtained a decree that, his father is legally dead. There is no Rule or provisions available, the appointment on compassionate ground is granted to the legal heir of a deceased employee and not to the legal heir of a missing employee. Furthermore, the Petitioner's application seeking compassionate appointment is made after the stipulated period of three years. The Hon'ble Supreme Court, has time and again held in a number of cases, that the scheme of compassionate appointment cannot be granted after a lapse of three years. Also, it is represented that, the terminal benefits due to the Petitioner's father have been settled to his family members.

7.Thus, in view of the foregoing, this Writ Petition stands dismissed as devoid of merits. However in the said circumstance, there shall be no order as to costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs  
To

- 1.The General Manager (South)  
Food Corporation of India,  
Zonal Office (South)  
No.3, Haddows Road,  
Chennai 600 006.

2.Area Manager,  
Food Corporation of India District Office,  
Sathyamurthy Road,  
Chennai 600 031

+1 CC to Mr.S.Vijayakumar,Advocate sr 37088.

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RSI (CO)  
SP(10/12/2020)



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