



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.7016 of 2011

and

M.P(MD)No.1 of 2011

Nandini Devi

... Petitioner

Vs.

1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai.

2.The Deputy Director of Medical
and Rural health Services (Leprosy),
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent pertaining to its order in letter No.53994/AD2/2006-2, dated 03.03.2008 and quash the same and consequently direct the respondents to provide appointment on compassionate ground.

For Petitioner : Mr.S.C.Herold Singh

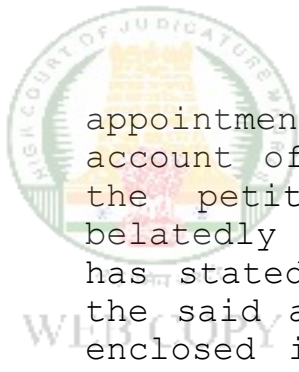
For Respondents : Mr.P.Mahendran
Addl.Govt.Pleader

O R D E R

The Government Order, dated 03.03.2008, is under challenge in the present Writ Petition.

2. The order of rejection of the claim of the writ petitioner for compassionate appointment is issued on the ground that the application itself is filed after a lapse of about 17 years and therefore, there is no provision under the scheme of compassionate appointment to extend the benefit of appointment.

3. The father of the writ petitioner Late Murugesan was working in the Department of Rural Health Services and died on 12.09.1990, while in service. The petitioner states that he was aged about 10 years old at the time of death of her father and therefore, he could not able to approach the respondents seeking



appointment. The family was in penurious circumstances, on account of the sudden death of the deceased employee. However, the petitioner submitted an application seeking appointment belatedly on 09.06.1999. Though the petitioner in her affidavit has stated that the application was submitted in the year 1998, the said application submitted in the proper format has not been enclosed in the typed set of papers filed along with the Writ Petition. In the absence of any such proper application, the date cannot be trusted upon merely on the statement. However, even as per the petitioner, she submitted an application after a lapse of 9 years from the date of death of her father. The impugned order has been passed after a lapse of about 9 years on 03.03.2008.

4. The learned counsel for the petitioner states that there was a ban for appointment and therefore, the case of the petitioner was not considered and accordingly, the application is to be treated as if submitted within the time limit and the Writ Petition is to be ordered.

5. The learned Additional Government Pleader appearing on behalf of the respondents opposed the contention by stating that even as per the petitioner, the first application was submitted after a lapse of 9 years. Therefore, there was an enormous delay even in filing the application. As per the Government scheme, the application has to be submitted within a period of three years. Admittedly, it was not submitted within a period of three years and therefore, the Writ Petition is to be dismissed.

6. Compassionate appointment is an exception and cannot be claimed as a matter of right. Enormous delay in submitting an application or the appointment was not considered for a longer period, then, a factual inference to be drawn by the Courts that the penurious circumstances arose on account of the sudden demise of the Government employee became vanished. Thus, the very purpose and object of the scheme of compassionate appointment to mitigate the circumstances is to be met with. In the absence, it is to be presumed that the family is no more require an appointment. It is not as if one appointment is to be provided to one legal heir of the deceased employee. The scheme is otherwise in violation of Articles 14 and 16 of the Constitution of India. Thus, the purpose of objects as well as the terms and conditions of the scheme are to be scrupulously followed by the competent Authorities.

7. This Court elaborately considered the principles in the matter of grant of compassionate appointment in W.P.(MD)No.20900 of 2015, dated 19.06.2019 and the relevant paragraphs are extracted hereunder :-



"5.This Court is of the considered opinion that the indigent circumstances of the family must be properly ascertained by the competent authorities by conducting a detailed enquiry. The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden demise of the deceased Government employee. Thus, the very scheme is to save the family and not to provide one appointment to one legal heir of the deceased employee. Therefore, the indigent circumstances, the life style, other source of income including the quantum of family pension, terminal benefits and retirement benefits received are all to be thoroughly ascertained by the competent authorities for the purpose of evaluating the indigent circumstances of the family of the deceased employee for the purpose of providing appointment on compassionate ground.

6.On account of increase in the strength of Government employees, there may be several deaths in various departments. It may not be possible for the Government to provide large scale appointments through the compassionate appointment schemes. In the event of expanding the scope of such special schemes, the equality clause is violated and further, the same will result in infringement of Constitutional rights of other citizen. Thus, the State must be cautious in implementing such special schemes, which is otherwise in violation of the recruitment rules in force as well as the Constitutional principles and perspective. It is brought to the notice of this Court that large number of applications are received by the Government for the purpose of providing appointment on compassionate ground. Thus, eligibility criteria, indigent circumstances and the terms and conditions of the scheme are to be strictly and scrupulously followed by the competent authorities concerned and there cannot be any compromise in the matter of verifying the facts and details of the family concerned, so as to arrive a conclusion in respect of the indigent circumstances and other relevant criteria. In the event of any lapse, negligence or dereliction of duty in this regard, the same would affect the very scheme of public appointment under the



Constitutional Schemes. Thus, the authorities must be cautious and the enquiry to be conducted must be transparent and the appointments are to be made strictly in accordance with the terms and conditions.

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7.The Hon'ble Supreme Court also held that the amount of family pension, terminal benefits and other benefits paid to the spouse of the employee are also to be taken in to account for the purpose of ascertaining indigent circumstances of the family of the deceased employee. At the outset, the genuinity of the claim of the legal heirs of the deceased employee is to be ascertained. The very object of the special scheme is to be protected by defeating the wrongful claims and by not allowing the legal heirs of the deceased employee to take any undue advantage of such exceptional schemes. For all these reasons, the government must provide compassionate appointment only to the genuine cases where the family of the deceased employee is badly in need of employment and in distress.

8. This being the consideration to be shown by the competent authorities of the Government, the circumstances warrants the Government has to mould the policy in such a manner in respect of the family in distress and not to provide one employment to one family of the deceased employee. In the event of enlarging the scope, even the opportunity for the genuine families may be denied and there is a possibility that a family genuinely in distress may not get an opportunity to get the appointment on account of the wrongful appointments, if any to be made under the scheme of compassionate appointment. Thus, the genuinity and indigent circumstances are all paramount importance and the same is to be ascertained at the first instance by conducting a detailed and transparent enquiries. In the event of any lapse, negligence or dereliction of duty on the part of the authorities competent then the higher officials as well as the Government should take stringent actions against all those authorities under the Discipline and Appeal Rules.

9.The welfare schemes are to be implemented without infringing the rights of all other citizen



under the constitution. Any welfare scheme affecting or infringing the rights of other citizen are not only unconstitutional, it infringes the fundamental rights of all other citizen. Any such welfare schemes cannot provide any undue advantage to any person or to clause of persons, thus the Government is bound to issue consolidated and comprehensive Instructions / Guidelines / Circular to all the competent authorities of various departments of Government of Tamil Nadu for the purpose of providing the benefit of the scheme of the compassionate appointment to the legal heirs of the deceased employee.

10. For the purpose of issuing such consolidated Instructions / Guidelines / Circulars, it is necessary that this Court should implead the Chief Secretary to the Government only for that limited purpose. This Court is inclined to suo-moto implead the Chief Secretary to the Government of Tamil Nadu, Secretariat, Chennai-9 and accordingly, the Registry is directed to implead the Chief Secretary as fourth respondent in the present writ petition.

11. Compassionate Appointment is an exception. The same cannot be claimed as a matter of legal right. Equal opportunity in public employment is the Constitutional mandates. Equality clause enunciated in the Constitutional must be scrupulously followed while undertaking the process of selection and appointment to all the public force. Lakh and Lakh of young people of this great nation are burning their midnight lambs for securing their public employment. In the event of expanding the scheme of scope of compassionate appointment, the constitutional rights of all those common people are not only deprived, they are losing an opportunity for which otherwise they are entitled under Constitution of India.

12. There are many number of poor families in our great nation wherein not even a single person is in Government service/ public service. There are many number of families where the fathers are leading wayward life and not taking care of the family and mothers are struggling to save the children and the family. Such mothers are in



distress even to provide education to her children. They are struggling and going for job in private houses, companies etc. Under these circumstances, the Government is obligated to provide equal opportunity to those families, where not even single person is in Government service. Only in the event of making appointments under the constitutional schemes, those meritorious candidates from the poor families will get an opportunity to enter into the Government service. Contrarily, many number of posts if filled up through such special schemes the opportunities to these weaker sector are taken away. Such a situation should never arises and in that event the State Government is violating the concept of social justice ensured under the Constitution of India.

13. In the event of expanding the special schemes, the State failed to be a model employer and further such special employment and schemes are provided in favour of few families by neglecting the larger sector of the families who are also struggling in our great nation. State being a model employer, must be cautious in implementing such schemes and provided public employments strictly under the constitutional schemes and by providing equal opportunity to all the candidates, who are all aspiring to secure public employment through open competitive process and by rule of reservation.

14. Compassionate appointment being a special scheme, no selection process is conducted. The rule of reservation has not been followed. No interview is conducted. No merit assessments are made. If the public appointments are made in this manner in large scale any prudent man will understand that the efficiency in public administration will undoubtedly come down. The efficiency in public administration is not only compromised, but it will lead to favouritism and nepotism.

15. The legal principles in this regard are repeatedly settled by this Court in many number of judgments, inspite of that, the Government has so far not issued consolidated instructions enabling the subordinate authorities to follow the rules



constitutionally and uniformly, so as to avoid discriminating, if the persons who are submitting application on compassionate appointment.

16. This Court is of the opinion that consideration for appointment on compassionate ground is to be construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore does not create a vested right in favour of the claimant. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. A compassionate appointment is justified when it is granted to provide immediate succor to the deceased employee. Mere death of a Government employee in his harness, it does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family of the deceased employee."

8. In view of the principles laid down in the Judgment cited supra, the reasons stated in the impugned order is in consonance with the principles and there is no infirmity as such. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar (CS)

MPK

To

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat,

<https://hcservices.hc.madras.gov.in/hcservices/>



2.The Deputy Director of Medical
and Rural health Services (Leprosy),
Dindigul District.

+1 CC to SGP (SR-24618[F] dated 09/12/2020)

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