



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.5855 of 2014

S. Kumar

... Petitioner

Vs.

1. The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

2. The Secretary, Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

.. Respondents

Prayer: Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings No.SCT5/1279/2014/GA dated 13.02.2014 and quash the same and consequently direct the respondents to appoint the petitioner forthwith on compassionate ground in the post of clerk in Chennai Port Trust and pass orders.

For petitioner : Mr.K.Raja

For respondents : Mr.Hajamohideen Gisthi
for R1 and R2.

ORDER

This writ petition has been filed to quash the impugned order dated 13.02.2014 and consequently direct the respondents to appoint the petitioner forthwith on compassionate ground in the post of clerk in Chennai Port Trust.

2. The case of the petitioner in brief:

The petitioner's father M.Subramanian was working as Riveter Grade-I in Chennai Port Trust and he died on 17.02.2001, while he was in service, leaving behind his wife, two sons and one daughter (including the petitioner). Immediately, the petitioner made application for compassionate appointment before the respondents on 29.03.2001 and he was given D.R.No.2538/2001 vide letter dated 01.11.2011. He also worked as Apprentice from 1991 to 1994 as Fitter in Chennai Port Trust and he studied upto B.A. The contention of the petitioner is that, instead of giving compassionate appointment, the respondents gave pressure to accept the



meagre financial help in lieu of compassionate appointment and finally given a sum of Rs.3,85,000/- on 13.10.2012 on a humanitarian gesture. After came to know that the juniors, whose father died, after the death of petitioner's father were given compassionate appointment, by overlooking the petitioner's seniority, he repaid the above amount by Demand Draft bearing No.508522 dated 03.02.2014. But it was returned by the respondent vide impugned order dated 13.02.2014. Hence, this writ petition.

2. The contentions of the counter affidavit filed by the respondents are briefly as follows:

The issue of compassionate appointment will not be considered based on the seniority and it will be considered based on the penurious condition of the deceased employees and as per Rule. Upon implementation of Government Order No.14014/19/2002-Estt(D) dated 05.05.2003, 868 dependants names were weeded out from the dependant list, including the petitioner herein, who have completed three years of waiting period. However, considering the pitiable condition of such of those dependants, on approval of the Ministry, a letter has been sent to all the 868 dependants, including the present petitioner on 16.06.2012, wherein, it was clearly mentioned that a lumpsum compensation would be made in lieu of compassionate appointment in the Port Trust. The petitioner and his family members have filed joint declaration and indemnity bond agreeing to receive the lump sum of Rs.3,85,000/- on a humanitarian gesture. After having accepted the compensation awarded and having received the above sum, without any demur, the petitioner, on a change of mind, has sent a Demand Draft for Rs.3,85,000/- to the respondents. But, it was returned to him by RPAD on 13.02.2014, stating that the compensation package was made in lieu of the claim for compassionate appointment. The petitioner cannot now be retract and his claim cannot be considered at this stage.

2.1. In order to comply the order of the Hon'ble Supreme Court of India in SLP (C)No.34085 of 2013 and the order of this court in W.P.No.7522 of 2011, one S.Jayachithra has been appointed as peon in the Chennai Port Trust. But, there are no orders from the Hon'ble Supreme Court to consider all the dependants for compassionate appointment. Hence, this writ petition is liable to be dismissed.

3. Heard the rival submissions made by the counsels to both the parties. I have perused the materials on record.

4. Admittedly, the petitioner had submitted an application before the respondents on 29.03.2001 seeking compassionate appointment. Thereafter, he received a cheque for Rs.3,85,000/- dated 13.10.2012, as one time measure in lieu of compassionate appointment and to that effect, the petitioner and his family members have submitted their Joint



Affidavit of Declaration and Indemnity Bond. In the above declaration, it was agreed by them as follows.

" We have agreed amongst ourselves to authorize one among us viz., (3) S. Kumar, who is the applicant for appointment on compassionate ground and whose name is now being weeded out in the waiting list for compassionate appointment in lieu of the said compensation package, to receive the lump sum compensation package as a one time measure, on behalf of all of us and as the representative of all the dependants of late M.Subramani, Ex.Employee, Chennai Port Trust and that all of us have absolutely no objection whatsoever in the Chennai Port Trust issuing and making payment of the entire compensation amount as a one time measure to one among us on behalf of all of us.

In acknowledgement of the fact that the said payment of compensation is being done by the Chennai Port Trust only on a humanitarian gesture, we state and submit that we have no further claims whatsoever against the Chennai Port Trust, present or future, in this regard".

5. Therefore, the petitioner had received the said amount on 13.10.2012 from the Port Trust and submitted Affidavit of Declaration and Indemnity Bond declaring that they have no further claims whatsoever against the respondents. Subsequently, after two years, he made representation on 03.02.2014, seeking compassionate appointment, by returning the amount of Rs.3,85,000/- through Demand Draft. But the second respondent had returned the above said Demand Draft to the petitioner stating compensation package was made only in lieu of the claim for compassionate appointment.

6. According to the petitioner, similarly placed person namely one Jayachitra got appointment, pursuant to the order passed by this court and hence, he may be granted a relief for compassionate appointment. But, on perusal of the orders passed in favour of the above said Jeyachitra shows that, she has not received any compensation of lump sum in lieu of the compassionate appointment. The facts of above said case is different from the facts of the present case. Therefore, the above order will not apply to the present case.

7. More over, the petitioner's father died on 17.02.2001. After lapse of nearly 13 years, i.e. on 03.02.2014, the petitioner gave representation to the respondents seeking compassionate appointment, beyond the prescribed period of three years.

8. In an identical issue, the Honourable Supreme Court in the judgment in Government of India and another Vs.



P.Venkatesh reported in (2019) 15 SCC 613, has held as follows:

8. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Court 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 09.08.2016, nearly twenty one years had elapsed since the date of the death of the employee.

9.

10. Bearing in mind the above principles, this Court held: (Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138) SCC pp.141-42, para 6)

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

9. Therefore, in view of the above discussions and the settled position of law, the claim of the petitioner, made beyond the prescribed period of three years and as merits cannot be entertained and hence, there is no ground to interfere with the impugned orders passed by the second respondent.

10. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar



mst

To

WEB COPY

1. The Chairman,
Chennai Port Trust,
Rajaji Salai, Chennai 600 001.
 2. The Secretary, Chennai Port Trust,
Rajaji Salai, Chennai 600 001.
Rajaji Salai, Chennai 600 001.
- +1cc to Mr.K.Raja, Advocate SR.No.61405

W.P.No.5855 of 2014

GPL (CO)
GMY (13/12/2021)