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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.18429 OF 2014

J.Saravanan

... Petitioner

-vs-

1. The Managing Director,
Chennai Metro Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

2. The General Manager,
Chennai Metro Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

... Respondents

PRAYER:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to impugned order of the 2nd respondent in his letter No.Cekuvaa/Pamani/Nima 4 / 10756 / 2014 dated 21.03.2014 and quash the same as highly illegal violative of Articles 14 and 16 of the Constitution of India and consequently, direct the respondents to give appointment to the petitioner on compassionate grounds.

For Petitioner : Mr.P.Ayyamperumal

For Respondents : Mr.N.Ramesh
for R1 and R2

O R D E R

The petitioner, challenging the impugned order of the second respondent dated 21.03.2014, in and by which his request for appointment on compassionate ground came to be rejected, has filed this writ petition.

2. The case of the petitioner is that his father was working as an employee in Division 10 of Chennai Metro Water Supply and Sewerage Board and he died on 16.08.1990, while he was in



service, leaving behind his wife and son/petitioner herein. On 07.01.1991, the petitioner's mother J.Devaki, who was 36 years of age at that time, had submitted an application to the respondents Board seeking appointment on compassionate ground. According to the petitioner, pending consideration of his mother's application seeking compassionate appointment, she became over aged and the respondents informed that she did not possess the educational qualification and also orally informed the petitioner's mother to resubmit an application afresh for considering compassionate ground appointment in favour of the petitioner. Accordingly, the petitioner's mother had submitted another application on 17.12.1997, seeking appointment on compassionate ground in favour of her son/ petitioner herein. The petitioner also submitted repeated representations thereafter to the respondents Board dated 04.02.2008, 23.01.2009 and 17.03.2014 and vide impugned order dated 21.03.2014, the second respondent rejected the petitioner's request on the ground that the application seeking appointment on compassionate ground was not submitted within the prescribed period of 3 years and also that compassionate appointment cannot be given to an alternative legal heir. Challenging the aforesaid order of the second respondent, the present writ petition has been filed.

3. The learned counsel for the petitioner would submit that initially the application seeking appointment on compassionate ground was submitted by the petitioner's mother on 7.01.1991, i.e., within the prescribed period of three years and it was kept pending without passing any orders on account of administrative reasons till 2007 and as per the oral instructions by the respondents Board, the petitioner's mother re-submitted the application on 17.02.1997 seeking appointment on compassionate ground to the petitioner/son and therefore, there is no delay on the part of the petitioner and however, the respondents have rejected the petitioner's request through the impugned order by citing untenable reasons and therefore, prays for setting aside the impugned order and for a consequential direction to the respondents Board to give appointment to the petitioner on compassionate ground. The learned counsel for the petitioner, in support of his contentions, has placed reliance on the decision of a learned Single Judge of this Court in Mohanambal v. The Director Land and Survey Department, Kancheepuram and Others reported in 2011 (1) CTC 349.

4. Mr.N.Ramesh, learned Standing Counsel for the respondents has drawn the attention of this Court to the counter affidavit filed by the second respondent and would submit that the Government vide their letter No.28324/MW2/2006-5 MA&WS Department dated 29.06.2007 has clarified that the Government have not issued any order to consider the alternative legal heir for the one who had already applied for appointment on



compassionate ground immediately after the death of the Government Servant and the petitioner had already been informed by the respondents vide various letters dated 27.03.2006, 30.09.2006, 30.09.2008, 17.02.2009, 11.07.2011, 21.03.2014 that there is no provision for giving compassionate appointment to an alternative legal heir and the averment of the petitioner that his application was rejected only on 21.03.2014 is totally contrary to facts. The learned Standing Counsel would further contend that the employee/petitioner's father died on 16.08.1990 and the family of the deceased survived for more than 24 years and the claim of the petitioner for employment after 24 years of death of his father was not to mitigate the indigent circumstance and therefore, prays for dismissal of this writ petition.

5. I have anxiously considered the rival submissions of the learned counsel for the parties and perused the materials placed on record.

6. Admittedly, the petitioner's father died on 16.08.1990 and the petitioner's mother submitted the application on 07.01.1991 seeking compassionate ground appointment to herself and at that time, the petitioner's mother did not possess the requisite educational qualification and even the respondents Board had deferred all the appointments since 1992 for administrative reasons and resumed the Scheme in the year 2007 and in the meantime, the petitioner's mother submitted the application dated 17.02.1997 seeking appointment to his son and the respondents had already informed through various communications including the impugned order to the petitioner stating that his request cannot be considered as the application was not filed within the mandatory period of three years and there is no provision for giving compassionate ground appointment to an alternative legal heir.

7. The object of giving compassionate ground appointment is to mitigate the immediate sudden financial crisis caused to the family of the deceased on account of demise of the Government Servant. At this juncture, it is useful to refer to the decision of the Hon'ble Apex Court in Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138], wherein the Honourable Supreme Court has held as follows:

"The whole object of granting compassionate employment is thus 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 post held by the deceased. What is further, mere death



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of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of 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."

8. In *Bhawani Prasad Sankar vs. Union of India and Others* [2011 (3) LLN 37 (SC)], the Honourable Supreme Court has held as follows:

"(i) Compassionate employment cannot be made in the absence of Rules or Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the Scheme.

(ii) ...

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be."

9. In *State of Himachal Pradesh and another vs. Parkash Chand* [(2019) 4 SCC 285], the Honourable Supreme Court has held as follows:

"8. The High Court while deciding issue (ix) has relied upon the decision of this Court in *Govind Prakash Verma v. LIC* [(2005) 10 SCC 289] more specifically on the observation that the mere fact that the elder brother of the applicant was engaged in agricultural work and was also doing the work of a casual painter, would not be construed as gainful employment. This finding in *Govind Prakash Verma* [(2005) 10 SCC 289] is purely on the facts of that case and cannot be construed to be of any relevance to the



10. An Identical issue came up before a Honourable Division Bench of this Court in W.A.No.1749 of 2019 (Sudhanthira Devi vs. The State of Tamil Nadu and others) [in the said Judgment, myself (DKKJ) had an occasion to share the Division Bench] and the Division Bench, by Judgment dated 03.09.2019, following the decisions of the Honourable Supreme Court, has held that applications for compassionate appointment submitted beyond the period of three years cannot be entertained.

11. In Government of India and another v. P.Venkatesh [(2019) 15 SCC 613], wherein the Hon'ble Supreme Court has held as follows:

"8. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts 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 9-8- 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 v. 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."



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12. The Honourable Full Bench of this Court in Paragraph No.13 of the Judgment dated 11.03.2020 in W.P.(MD) No.7016 of 2011 has held as follows:

"13. In the light of the above we find that the judgment in the case of A.Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E.Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

13. Furthermore, G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, has clearly prescribed the time limit to prefer application for compassionate appointment as three years from the date of death of the Government servants. In the said Government Order, the Government has issued a comprehensive guidelines for compassionate ground appointment, in supersession of all the earlier orders issued. Further, in the above said Government order, with regard to alternative application, it has been held thus:

Alternative Application: If the applicant (legal heir of deceased Government Servant) died after applying for compassionate ground appointment, an alternative application may be accepted from the another legal heir of the deceased Government Servant, subject to conditions prescribed for compassionate ground appointment.

14. It is also to be noted that the petitioner's family was able to survive for about 24 years after the death of the deceased/employee and the claim of the petitioner for employment after 24 years of death of his father was not to mitigate the indigent circumstance and the very purpose of the act would be defeated if the respondent is directed to consider the case of



the petitioner for appointment on compassionate ground.

15. In view of the aforesaid facts and the settled legal position, the claim of the petitioner cannot be entertained and it deserves to be rejected. This Court finds no reason to interfere in the impugned order passed by the second respondent.

16. Accordingly, this writ petition stands dismissed. It is made clear that this order will not stand in the way of the respondents to pass appropriate orders on the application for compassionate ground appointment filed by the petitioner's mother, which is pending before the authorities/respondents. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jvm

To:

1. The Managing Director,
Chennai Metro Water Supply and Sewerage Board,
No.1, Pumping Station Road, Chintadripet, Chennai-600 002.
2. The General Manager,
Chennai Metro Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

+1cc to Mr.P.Ayyamperumal, Advocate, S.R.No.60231

W.P.No.18429 of 2014

RSI (CO)
PM/08/12/2021