



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P (MD)No.7211 of 2019

B. Selvamurugan

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Block Development Officer,
Vembakkottai Panchayat Union Office,
Vembakkotai,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.A1/1919/2018, dated 14.11.2018 on the file of the 2nd respondent herein and to quash the same as illegal and consequently direct the 2nd respondent herein to appoint the petitioner in any suitable post under compassionate appointment in 2nd respondent's Office.

For Petitioner : M/S.M.Thirynavukkarasu

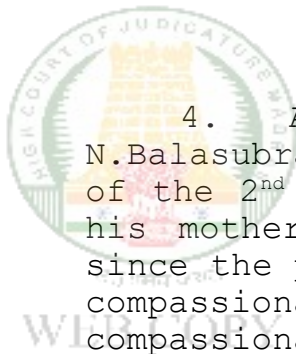
For Respondents : Mr.A.K. Manickam
Counsel for state

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.A1/1919/2018, dated 14.11.2018 on the file of the 2nd respondent herein and to quash the same as illegal and consequently direct the 2nd respondent herein to appoint the petitioner in any suitable post under compassionate appointment in 2nd respondent's Office

2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

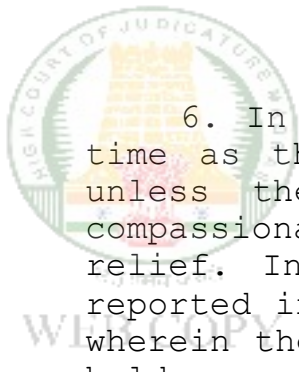
3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.



4. According to the petitioner, his father, Late N.Balasubramanian, while working as Junior Assistant in the Office of the 2nd respondent, died in harness on 15.11.2006 leaving behind his mother, wife and son, the petitioner herein. At that time, since the petitioner was a minor, his mother made an application for compassionate appointment, but she was not conferred with the compassionate appointment. While so, on attaining the majority and after obtaining a bachelor Degree in B.Sc., an application was made in the year 2016 to the 2nd respondent, seeking compassionate appointment in favour of the petitioner. However, by proceedings dated 14.11.2018, the 2nd respondent rejected the claim of the petitioner on the ground that it was not made within the prescribed time limit of 3 years. Hence, the Writ Petition.

5. Admittedly, when his father died on 15.11.2006, the petitioner was a minor and was not eligible for appointment. After a period of nearly 10 years, the petitioner claims appointment on compassionate grounds. It is beyond the prescribed time limit of 3 years. In this regard, it is worthwhile to refer a decision of this Court in "*A.Venkatesan versus The Chairman, TNEB, Chennai and another*" in W.P.No.33500 of 2014, dated 11.10.2018, wherein, it has been observed as under:

"4. This Court is of an opinion that the compassionate appointment is a special scheme and the scheme of compassionate appointment was introduced to mitigate the penurious circumstances arising on account of the sudden death of the Government employee. Thus, the scheme of compassionate appointment must be extended to the legal heirs of the deceased employee to protect their livelihood, immediately after the death of the deceased employee. **Thus, the appointment to be granted on compassionate grounds within a reasonable period of three years or atleast within a period of five years. Beyond that, legal presumption would be that the penurious circumstances arising on account of the sudden death of the Government employee became vanished. It is not as if the compassionate appointment can be claimed as a matter of right to provide one appointment to one family of the deceased Government employee.** Such a scheme can never be accepted, in view of the fact that the scheme of appointment itself, is in violation of Article 14 and 16 of the Constitution of India. The scheme being a special one was introduced in violation of the constitutional principles. Therefore, the same must be implemented strictly in accordance with the terms and conditions....."

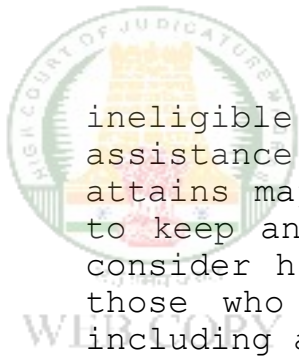


6. In fact, there cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. In this regard, it is worthwhile to refer to a decision reported in "**State of Manipur vs. Md. Rajaodin**" {(2003) 7 SCC 511}, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments 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 bread-earner 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 envisage 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 re-iterated in Phoolwati (Smt.) vs. Union of India and others (1991) Supp. (2) SCC 689) and Union of India and others vs. Bhagwan Singh (1995 (6) SCC 476). In Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others (1998 (5) SCC 192) it was observed that in 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 ground 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 there nullity the main provision by taking away completely the right conferred by the main provision."

7. Therefore, the scheme of providing compassionate appointment can be extended only to eligible member of the family and not to an

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ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

8.In the light of the above decisions supra, no relief can be granted, as there is no illegality in the impugned order of the second respondent in Na.Ka.No.A1/1919/2018 dated 14.11.2018. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Block Development Officer,
Vembakkottai Panchayat Union Office,
Vembakkotai,
Virudhunagar District.

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-27352[F] dated 26/08/2021)

+1 CC to M/s.GP (SR-27390[F] dated 26/08/2021)

W.P (MD)No.7211 of 2019
25.08.2021

MGJ(13.09.2021) 4P 5C

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