



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.25353 of 2018
& WMP (MD) No.22950 of 2018**

P.Adhi Vishnu

... Petitioner

Vs.

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

2.The Director of
Medical and Rural Health Services,
Chennai.

3.The Joint Director of
Health Services,
Dindigul,
Dindigul District.

4.The Medical Officer,
Government Hospital,
Vedasandur,
Dindigul District.

... Respondents

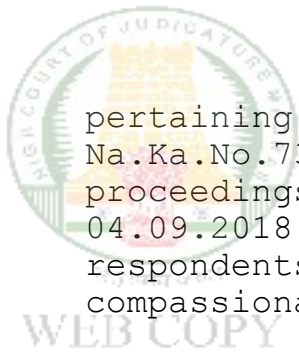
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 3rd respondent in Na.Ka.No.7322/Ni2/2017 dated 16.07.2018 and consequential impugned proceedings of the 4th respondent in Na.Ka.192/A1/2017 dated 04.09.2018 and quash the same as illegal and consequently direct the respondents to grant appointment order to the petitioner on the compassionate ground.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.S.Shanmuavel
Counsel for state

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records
<https://hcservices.ecourts.gov.in/hcservices/>



pertaining to the impugned proceedings of the 3rd respondent in Na.Ka.No.7322/Ni2/2017 dated 16.07.2018 and consequential impugned proceedings of the 4th respondent in Na.Ka.192/A1/2017 dated 04.09.2018 and quash the same as illegal and consequently direct the respondents to grant appointment order to the petitioner on the compassionate ground.

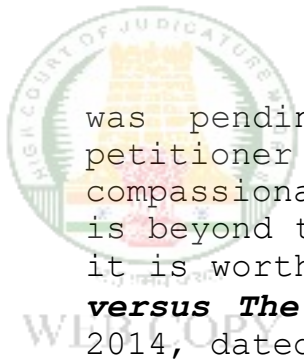
2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

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 R.Periyasamy, while working as Pharmacist in Vedasandur Government Hospital, died in harness on 21.09.2004 due to sudden heart attack. The mother of the petitioner made an application in the month of January, 2005 for compassionate appointment. Since there was ban on recruitment, her application was rejected by the 2nd respondent. Thereafter, again, she made an application dated 07.09.2006 and the 3rd respondent by proceedings dated 12.03.2008 informed that her application would be considered based on seniority. While so, since she reached the age of 50 years and in the mean time, the petitioner attained the majority, his mother gave an application on 13.7.2017 to the 2nd respondent. By proceedings, dated 16.7.2018, the 3rd respondent rejected the application. Thereafter, the 4th respondent also, by proceedings dated 04.09.2018 reiterated the order passed by the 3rd respondent. Aggrieved by the same, the present writ petition has been filed by the petitioner.

5. A counter affidavit has been filed on behalf of the 4th respondent, stating that after demise of the deceased employee, his wife, i.e. the mother of the petitioner herein made an application to provide compassionate appointment to her on 21.09.2006 and the same was considered and she was assigned seniority vide Sl.No.73. While so, the petitioner's made an another application on 13.07.2017 seeking to provide compassionate appointment to her son who attained the majority. The said application was rejected since there cannot be two applications for the same post. It is also stated that since the subsequent application was not made in terms of the Rules and beyond the period of three years, the same has been rejected.

6. Admittedly, when his father died on 21.09.2004, the petitioner was a minor and was not eligible for appointment. The petitioner's mother made application on 12.03.2008 and the same was considered and she was assigned seniority as Sl.No.73 and while it



was pending, the petitioner became major and once again the petitioner made an application on 13.07.2017, seeking to provide compassionate appointment to her son. It is not in dispute that it is beyond the prescribed time limit of three 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.

"

7. 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:-

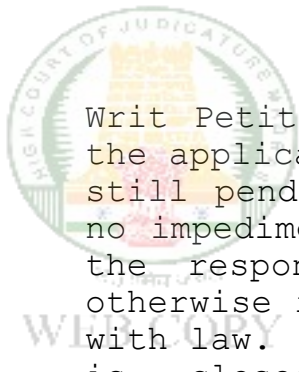
"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to 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."

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

9. In the light of the above decisions supra, no relief can be granted be granted as there is no illegality in the impugned proceedings of the 3rd respondent in Na.Ka.No.7322/Ni2/2017 dated 16.07.2018 and consequential impugned proceedings of the 4th respondent in Na.Ka.192/A1/2017 dated 04.09.2018 Accordingly, this



Writ Petition is dismissed. However, it is pertinent to note that the application made by the petitioner's mother dated 21.09.2006 was still pending and she was assigned seniority at Sl.No.73, there is no impediment for the respondents to consider the same. Therefore, the respondents are directed to consider the same, if it is otherwise in order and pass appropriate orders therein in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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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 Secretary to Government,
Health and Family Welfare Department,
Chennai.
- 2.The Director of
Medical and Rural Health Services,
Chennai.
- 3.The Joint Director of
Health Services,
Dindigul,
Dindigul District.
- 4.The Medical Officer,
Government Hospital,
Vedasandur,
Dindigul District.

+1 CC to M/s.GP (SR-27385[F] dated 26/08/2021)

W.P (MD) No.25353 of 2018
25.08.2021

RD(14.09.2021) 5P 6C