



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.16197 of 2018

C.Arunkamal @ Selvaprabhu

... Petitioner

-vs-

- 1.The Government of Tamilnadu
Rep.by its Principal Secretary
Health Department
St.George Fort, Chennai
- 2.The Director of Medical Education
DMS Campus, Teynampet, Chennai
- 3.The Dean
Kilpauk Medical College Hospital
Kilpauk, Chennai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order passed in Na.Ka.No.4753/Ni-1/2/2016, dated 13.06.2018, issued by the third respondent and quash the same and also directing the respondents to give any suitable appointment to the petitioner on the basis of the compassionate ground in Medical Department.

For Petitioner : Mr.V.Nagendran
For Respondents : Mr.S.Shanmugavel
Government Counsel

O R D E R

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the order dated 13.06.2018, passed by the third respondent and to direct the respondents to consider the case of the petitioner for appointment on compassionate grounds.

2. The case of the petitioner is that he was born on 30.03.1997 and on the next day i.e.31.03.1997, his mother, who was working as Staff Nurse in Kilpauk Medical College Hospital, Chennai, died. Thereafter, his father was appointed as a Clerk on compassionate ground and he died on 04.05.2006, while he was in service. On 10.07.2013, the petitioner made an application to the third respondent seeking compassionate appointment. However, the request of the petitioner was rejected on the ground that the application was not made within the prescribed period of three



years. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that at the time of death of the petitioner's father, the petitioner was nine years old and therefore, he could not submit application, however, after attaining the majority, he submitted application on 10.07.2013 along with requisite certificates. The learned counsel further submitted that since the petitioner has lost his father and mother, who were Government servants and he is suffering a lot without any job and income, his case may be considered for compassionate appointment.

4. The learned Government Counsel appearing for the respondents submitted that as per the Government Order in G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, the time limit to prefer application for compassionate appointment is three years from the date of death of the employee. But, the petitioner herein submitted application after a lapse of nearly ten years and hence, the third respondent has rightly rejected the petitioner's application for compassionate appointment.

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

6. Identical issue came up before the 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) is one of the member] 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.

7. In **Government of India and another v. P.Venkatesh [(2019) 15 SCC 613]**, the Honourable 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 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."

Judgment 8. The Honourable Full Bench in Paragraph No.13 of the **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."

9. 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.

10. In the case on hand, admittedly, the petitioner's father died on 04.05.2006 and the petitioner submitted application for compassionate appointment only on 10.12.2016, nearly after ten years. Therefore, in view of the above settled legal position, the



claim of the petitioner made beyond the prescribed period of three years cannot be entertained and it deserves to be rejected. Accordingly, the impugned order does not warrant any interference of this Court.

11. In fine, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

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To:

- 1.The Principal Secretary,
Health Department,
Government of Tamilnadu,
St.George Fort, Chennai.
- 2.The Director of Medical Education,
DMS Campus,
Teynampet, Chennai.
- 3.The Dean,
Kilpauk Medical College Hospital,
Kilpauk, Chennai.

+1 CC to M/s.SPL GP (SR-25491[F] dated 06/08/2021)

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KS (CO)

KB(12.08.2021) 4P 5C