



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.24925 of 2019

Ezhil Malar

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District,
Nagercoil.

2. The Joint Director of Agriculture,
District Collectorate,
Nagercoil,
Kanyakumari District.

3. The Assistant Director of Agriculture,
Assistant Director of Agriculture Office,
Thakkalai,
Kanyakumari District.

4. The Agriculture Development Officer,
Agriculture Development Office,
Kurunthancode,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issue of Writ of Mandamus, directing the respondents to give compassionate appointment to the petitioner on the basis of her application dated 13.07.2019.

For Petitioner : Mr.R.Shankar Ganesh
For Respondents : Mr.A.K.Manickam,
Counsel for State

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondents to give compassionate appointment to the petitioner based on her application dated 13.07.2019.

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, her father was died while he was in service due to the sudden heart attack. At the time of her father's death, the petitioner and her elder sister were minors. Thereafter, the petitioner attained majority and she was married in the year 2011. She made a representation to the respondents on 12.07.2019 in person and she consigned the same to the respondents on 13.07.2019 through post. However, no orders have been passed by the respondents till date. According to the petitioner as per G.O.Ms.No.78, Labour and Employment(Q1) Department dated 21.04.2014, the Government has permitted to accord compassionate appointment to the married daughters and the petitioner being the married daughter, she is entitled for the compassionate appointment. Therefore, present writ petition has been filed by the petitioner before this Court for compassionate appointment.

5. Counter affidavit has been filed by the second respondent, wherein, it has been stated that as per GO.Ms.No.560, Labour and Employment Department dated 03.08.1977 the petitioner was not possessing required qualification and hence, she was not eligible for the compassionate appointment on the death of the deceased employee. It is further stated in the counter affidavit that the petitioner has approached this Court after a passage of 21 years and after the application of her elder sister was rejected by the Commissioner of Agriculture. The petitioner's elder sister's application was rejected for want of required qualification and the same ground is applicable to the petitioner also. The present application submitted by the petitioner on 15.07.2019 was beyond the period of 3 years even after attaining the age of majority.

6. The very scheme of providing compassionate appointment is to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In the present case, already, the application made by the elder sister of the petitioner was rejected and nearly after 21 years, the petitioner has come forward with the similar application and the same was rightly rejected by the respondents since it was not within a prescribed time limit of three years.

7. 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 thereby nullify 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. For the foregoing reasons, this Court is of the view that the petitioner has not made out a case for consideration of her claim for compassionate appointment. Accordingly, the Writ Petition fails and it is dismissed. No costs.

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Assistant Registrar (CS II)

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/ /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,
Kanyakumari District, Nagercoil.
2. The Joint Director of Agriculture,
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4. The Agriculture Development Officer,
Agriculture Development Office,
Kurunthancode,
Kanyakumari District.

+1 CC to M/s.SHANKAR GANESH, Advocate (SR-27016[F] dated 23/08/2021)

+1 CC to M/s.SPL GP (SR-27313[F] dated 25/08/2021)

W.P. (MD) .No.24925 of 2019
23.08.2021

DJ(CO)

SR(01.09.2021) 4P 7C

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