



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.19549 of 2017

and

W.M.P. (MD) .Nos.15838 and 15839 of 2017

R.Padma Kumar

... Petitioner

Vs.

1.The District Collector,
O/o. The District Collectorate Office,
Virudhunagar,
Virudhunagar District.

2.The Revenue Divisional Officer,
O/o. The Revenue Divisional Office,
Sattur,
Virudhunagar District.

3.The Tahsildar,
O/o. The Tahsildar Office,
Vembakkottai,
Virudhunagar District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent in his proceedings in Ni.Mu.A6/31995/2013, dated 07.08.2017 and quash the same as illegal and consequently to direct the first respondent to provide employment to the petitioner on compassionate ground taking into account the recommendation made by the Special Deputy Collector cum Assistant Collector, Sivakasi by his proceedings in Na.Ka.A2/6517/2013 dated 26.06.2015 within the period that may be stipulated by this Court.

For Petitioner	: Mr.A.Nawaz Khan for Ajmal Associates
For Respondents	: Mr.M.Muthugeethayan Special Government Pleader

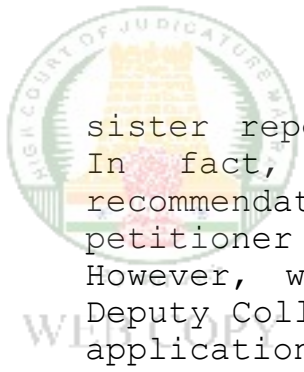
O R D E R

This writ petition has been filed challenging the impugned order passed by the first respondent in his proceedings in Ni.Mu.A6/31995/2013, dated 07.08.2017 and quash the same as illegal and consequently, direct the first respondent to provide employment to the petitioner on compassionate ground, taking into account the recommendation made by the Special Deputy Collector cum Assistant Collector, Sivakasi, by his proceedings in Na.Ka.A2/6517/2013, dated 26.06.2015.



2. The case of the petitioner is that his father was working as Village Administrative Officer at A.lakshmipuram, Sivakasi Taluk, Virudhunagar District and he died in harness on 16.12.1997, leaving behind the petitioner, mother, elder sister and his younger brother as legal heirs. Hence, the mother of the petitioner made an application for compassionate appointment to her on 29.06.1998. Thereafter, she made another application to the first respondent on 03.07.2000, for compassionate appointment to any one of the legal heirs, after attaining majority. The petitioner's sister made an application for compassionate appointment on 07.06.2004 and subsequently, the petitioner has also submitted his application on 06.11.2006 to the first respondent. However, no action has been taken. Therefore, the petitioner's mother once again gave a representation to the first respondent on 17.07.2013, requesting him to provide employment to the petitioner. The said representation was forwarded to the second respondent on 19.03.2014 and the third respondent, by his proceedings dated 03.07.2014, called upon the petitioner to appear before him on 15.07.2014 along with necessary documents. In compliance of the same, the petitioner appeared before the third respondent and produced the entire documents. In the mean while, the first respondent directed the Deputy Collector, Sivakasi to conduct enquiry and submit a report by his proceedings dated 29.09.2014 and 30.10.2014. Based on the instruction given by the first respondent, the Deputy Collector, Sivakasi by his proceedings dated 26.06.2015, sent a recommendation to the first respondent to appoint the petitioner as Junior Assistant on compassionate ground. After receipt of the said recommendation, the first respondent, by his proceedings dated 13.10.2015, sought for certain clarification and to rectify the discrepancies and the same was forwarded by the Assistant Collector to the third respondent on 20.05.2015. After rectifying the same, the proposal was forwarded to the first respondent and thereafter, the first respondent, by his proceedings dated 02.02.2016, forwarded the petitioner's original SSLC certificate to the Controller of Examination for verification. While so, the first respondent by his proceedings dated 19.09.2016, requesting the second respondent to submit the family financial status. Thereafter, the third respondent by his proceedings dated 15.10.2016, submitted the financial status report to the second respondent stating that the family is still under indigent circumstances. However, the first respondent, by his proceedings dated 07.08.2017, rejected the petitioner's application, on the ground that the appointment cannot be sought for other legal heirs belatedly. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that admittedly, the petitioner's mother made an application for compassionate appointment well within the time. However, in continuation of the earlier application, the petitioner and his



sister repeatedly made applications for compassionate appointment. In fact, the Deputy Collector, Sivakasi has also sent a recommendation to the first respondent on 26.06.2015, to appoint the petitioner to the post of Junior Assistant on compassionate ground. However, without considering the recommendation submitted by the Deputy Collector, mechanically the first respondent has rejected the application, which is unsustainable one and there is no delay on the part of the petitioner. Hence, he prays for allowing this writ petition.

4. Per contra, the learned Special Government Pleader appearing for the respondents would submit that the petitioner's mother made an application to the first respondent on 03.07.2000, seeking employment to any one of the legal heirs, after they attaining majority and that application itself shows that at the relevant point of time, though the eligible members are available in the family, she made application only to the legal heirs, which cannot be considered and the Scheme provides only to tide over the financial crisis faced by the deceased family. In the present case, the indigent circumstances of the family was not established before the authority and hence, he prays for dismissal.

5. Heard the learned counsel for the petitioner, learned Special Government Pleader appearing for the respondents and perused the materials available on record.

6. In the case on hand, it is not in dispute that the petitioner's father passed away in the year 1997 and the petitioner's mother made an application on 29.06.1998 for compassionate appointment to her and subsequently, she made another application on 03.07.2000 and admittedly, these two representations are made well within the time. However, in the said application dated 03.07.2000, the petitioner's mother seeking employment to any one of the legal heirs, after they attaining majority. Thereafter, the petitioner's sister made an application in the year 2004 and the petitioner made an application for compassionate appointment in the year 2006, which have been rejected. It is evident that the petitioner and his sister had applied beyond the prescribed period of three years.

7. Further, the Full Bench of this Court in **W.P. (MD) Nos. 7016 of 2011, etc. Batch**, vide order dated 11.3.2020 has held that the outer limit for consideration of a candidature for compassionate appointment is only three years and that too subject to the scheme that is in existence.

8. This Court, while dealing with a similar case in **M.Vigneswaran - Vs - Govt. of Tamil Nadu (W.P. No.25231 of 2014)**, vide order dated 09.12.2020, considering the decision of the Full Bench on the issue of compassionate appointment, held as under :-



"13. In **W.P. (MD)Nos.7016 of 2011, etc. Batch**, vide order dated 11.3.2020, on a reference made by the learned single Judge of this Court relating to conflicting views in relation to compassionate appointment, the matter was placed before the Full Bench. The reference made to the Full Bench is as under :-

"Whether the view taken in A.Kamatchi's case holding that an application for compassionate appointment made even beyond three years of the death of the deceased needs consideration, is the correct law or the judgment of the Division Bench in N.Renugadevi's case, where a contradictory view has been taken, is the correct law?"

Tracing the lineage on the advent of compassionate appointment and the factors that are to be had in mind, while considering a case of compassionate appointment, the Full Bench sculpted the factors that needs to be taken into consideration while looking at a case relating to grant of compassionate appointment and for better understanding the same is extracted hereunder :-

(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) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(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.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts. (Refer **Umesh Kumar Nagpal Vs. State of Haryana** (1994) 4 SCC



15. From the above, it is unambiguously clear that application for compassionate appointment should be made without undue delay and it should be considered strictly in accordance with the governing scheme and no discretion is vested with the authority and that the concept of compassionate appointment is only to meet the sudden crisis that has befallen the family on the death of the breadwinner.

16. From the above the main ingredient for considering a case for compassionate appointment is that it is only for the purpose of meeting the sudden crisis that has occurred due to the untimely death of the breadwinner. It is not that in all cases where the breadwinner breathes his last in harness, compassionate appointment, at any point of time, ought to be given as a matter of right.

17. The Full Bench, in the above said decision, after discussing the various Government Orders and also the laws propounded on the subject by the High Court as well as by the Hon'ble Apex Court, answered the reference in the following terms :-

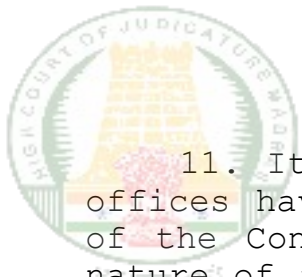
"In view of the above, the reference is answered as under:-

a) Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the scheme that has been framed by the employer. Any deviation from the scheme is not permissible.

b) In view of the above the judgment of the Division Bench in *E.Ramasamy Vs. Tamil Nadu Electricity Board* and the Secretary to Government Vs. *Renugadevi*, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in *A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board*, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down the correct proposition. Reference is answered accordingly."

9. From the conceptual proposition of law laid down by the Full Bench, it is implicitly clear that the appointment on compassionate basis should be strictly be in accordance with the Government Orders/the Scheme framed for the said purpose by the employer.

10. On the above proposition of law, it is evident that the very concept of giving a compassionate appointment is for the bereaved family to tide over the financial difficulties faced by it due to the untimely death of the breadwinner.



11. It should not be lost sight of that appointments to public offices have to comply with the requirements of Articles 14 and 16 of the Constitution of India. Compassionate appointment is in the nature of an exception to the ordinary norm of allowing equality of opportunity to other eligible persons to compete for public employment.

12. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority, such lapse of time on the part of the claimant will definitely lead to dilute the immediacy of the requirement. The time spent to attain majority cannot be a ground for claiming compassionate appointment. Indigency is the need that needs to be established, even within the threshold limit of three years, providing compassionate appointment. Holistically considering, the period of three years for moving an application for compassionate appointment is provided, which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority. However, the lower the age of the dependent would not be an attributing factor to extend the period, as such elasticity would have no ends to meet. Further, it should also not be out of context to state that the longer the period, the sustenance of the members of the family would by itself be an attributing factor to deny compassionate appointment.

13. For the reasons aforesaid, this Court is not inclined to interfere with the order passed by the first respondent as no case has been made out by the petitioner to substantiate his grievance. Accordingly, this Writ Petition, being devoid of merits, is dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// 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.



To

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ES (CO)

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