



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.3372 of 2022

V. Dinesh Kumar

... Petitioner

vs.

1. The Director,
Municipal Administration,
O/o. Directorate of Municipal Administration,
Chepauk,
Chennai - 600 005.

2. The Commissioner,
Vandavasi Municipality,
Vandavasi,
Tiruvannamalai District - 604 408.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the 1st respondent to acted upon the recommendations of 2nd respondent's letters dated 13.12.2014 and 06.08.2015 to provide employment on the ground of compassionate ground to petitioner being the legal heir of petitioner's father (late) Venkatesan based on the G.O.Ms.No.42 Labour & Employment (Q1) Department dated 12.03.2007 issued by the State of Tamil Nadu.

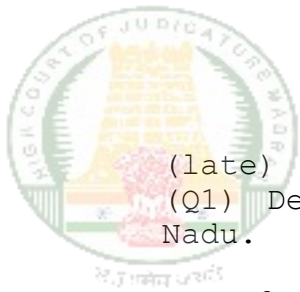
For Petitioner : Mr.S.Makesh

For Respondents: Mr.S.Prabhakaran
Government Advocate (for R1)

: Mr.L.P.Maurya
Standing Counsel (for R2)

O R D E R

This writ petition has been filed seeking to issue a Writ of Mandamus, to direct the 1st respondent to acted upon the recommendations of 2nd respondent's letters dated 13.12.2014 and 06.08.2015 to provide employment on the ground of compassionate ground to petitioner being the legal heir of petitioner's father



(late) Venkatesan based on the G.O.Ms.No.42 Labour & Employment (Q1) Department dated 12.03.2007 issued by the State of Tamil Nadu.

2. According to the petitioner, the petitioner's father was appointed on 05.11.1997 as Tanker Lorry Driver in the Vandavasi Municipality. While he was in service, he died on 30.08.2014. Thereafter, the petitioner's mother has made a representation dated 13.11.2014, requesting for compassionate appointment to her minor son viz., V.Dinesh Kumar/the petitioner herein. The said representation was rejected on the ground that the petitioner is not entitled for appointment on compassionate ground and he has not attained majority of 18 years at the time of death of his father/employee. According to the petitioner, the petitioner's mother has made another representation dated 15.07.2015 for appointment on compassionate ground to her son. The said representation has been recommended to the Director, Municipal Administration, Chennai. But so far, no order has been passed. Hence, the instant writ petition has been filed before this Court.

3. The learned Standing Counsel appearing for the 2nd respondent/Municipality would submit that at the time of submitting applications, the petitioner was a minor and therefore, he is not entitled for compassionate appointment.

4. Heard both sides and perused the materials placed on record.

5. Admittedly, when his father died on 30.08.2014, the petitioner was a minor and was not eligible for appointment on compassionate ground. After a period of nearly 8 years, the petitioner claims appointment on compassionate ground. It is beyond the prescribed time limit of 3 years.

6. The Honourable Supreme Court as well as this Court in a catena of decisions have repeatedly held that compassionate appointment cannot be made contrary to the relevant Rules. That apart the object of the compassionate appointment is to enable the family of the deceased Government employee to tide over the immediate financial crisis caused as a result of the untimely death of the employee and it is not a matter of right.

7. In Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138], the Honourable Supreme Court has held as follows:

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a



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post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family."

8. In *Bhawani Prasad Sankar vs. Union of India and Others* [2011 (3) LLN 37 (SC)], the Honourable Supreme Court has held as follows:

"(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) ...

(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."

9. In *State of Himachal Pradesh and another vs. Parkash Chand* [(2019) 4 SCC 285], the Honourable Supreme Court has held as follows:

"8. The High Court while deciding issue (ix) has relied upon the decision of this Court in *Govind Prakash Verma v. LIC* [(2005) 10 SCC 289] more specifically on the observation that the mere fact that the elder brother of the applicant was engaged in agricultural work and was also doing the work of a casual painter, would not be construed as gainful employment. This finding in *Govind Prakash Verma* [(2005) 10 SCC 289] is purely on the facts of that case and cannot be construed to be of any relevance



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to the present case.

9. The High Court has observed that the State should consider cases for appointment on compassionate basis by dealing with the applications submitted by sons, or as the case may be, daughters of deceased government employees, even though, one member of the family is engaged in the service of the government or an autonomous board or corporation. This direction of the judgment of the High Court virtually amounts to a mandamus to the State Government to disregard the terms which have been stipulated in paragraph 5(c) of its Policy dated 18-1-1990. The policy contains a limited exception which is available only to a widow of a deceased employee who seeks compassionate appointment even though one of the children of the deceased employee is gainfully employed with the State. The basis for this exception is to deal with cases where the widow is not being supported financially by her children.

10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to re-write the terms of the policy. It is well-settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. [Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138], SBI v. Kunti Tiwary [(2004) 7 SCC 271, Punjab National Bank v. Ashwini Kumar Teneja [(2004) 7 SCC 265], SBI v. Somvir Singh [(2007) 4 SCC 778, Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384], Union of India v. Shashank Goswami [(2012) 11 SCC 307, SBI v. Surya Narain Tripathi [(2014) 15 SCC 739 and Canara Bank v. M.Mahesh Kumar [(2015) 7 SCC 412].

11. For the above reasons, we are of the view that the judgment of the High Court is unsustainable. The High Court has virtually rewritten the terms of the Policy and has issued a direction to the State to consider applications which do not fulfill the terms of the policy. This is impermissible."

10. In Government of India and another v. P.Venkatesh [(2019) 15 SCC 613], the Honourable Supreme Court has held as follows:



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"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 twenty 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."

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



12. In the light of the aforesaid decisions of the Hon'ble Supreme Court as well as this Court, there is no merit in the instant writ petition and hence, the same is dismissed. No costs.

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Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The Director,
Municipal Administration,
O/o. Directorate of Municipal Administration,
Chepauk,
Chennai - 600 005.
2. The Commissioner,
Vandavasi Municipality,
Vandavasi,
Tiruvannamalai District - 604 408.

+1cc to Mr.L.P.Maurya, Advocate, S.R.No.23140
+1cc to the Government Pleader, S.R.No.23646

W.P.No.3372 of 2022

RK(CO)
SB(02/05/2022)