



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.9141 of 2022

R.Thamaraiselvan

... Petitioner

vs.

1. The Secretary, Tamilnadu Govt. Transport Department,
Secretariat, St. George Fort, Rajaji Salai,
Chennai 600009.

2. The Managing Director,
Tamil nadu Transport Corporation,
Pallavan Salai, Pallavan House,
Chennai 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to dispose the petitioner representation dated 05.11.2021 pending on the file of the respondents in accordance with law.

For Petitioner : Mr.M.Jaikumar

For R1 : Mrs. S.Anitha, Spl.Govt. Pleader

For R2 : Mr.K.Moorthy, Standing Counsel

O R D E R

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition has been filed seeking to issue a Writ of Mandamus, directing the respondents to dispose the petitioner's representation dated 05.11.2021 pending on the file of the respondents in accordance with law.

2. The case of the petitioner in brief:

The petitioner's father namely R.Ravi was working as driver in Tamil Nadu Transport Corporation, Villupuram and while he was in service, died on 26.09.2003. At the time of death of his father, the petitioner was only three years old and his mother is not educated. After attaining majority, the petitioner and



his mother approached the respondents on several time seeking job under compassionate appointment. The petitioner also gave representation on 05.11.2021. But the respondents did not consider the same. Hence this writ petition.

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3. The learned Standing Counsel appearing for the second respondent submitted that as per G.O.18, Labour and Employment Department dated 23.01.2020, the application seeking compassionate appointment shall be made within three years from the date of death of the deceased employee. But the petitioner has not made any application within three years and he had submitted his application only after attaining the age of majority. Hence, the petitioner is not entitled to claim compassionate appointment.

4. Admittedly, on the date of death of the petitioner's father, he was three years old. The representation was given only on 05.11.2021, which is beyond the period of three years from the date of death of petitioner's father. In this regard, it is worthwhile to refer a decision of this Court in Venkatesan versus The Chairman, TNEB, Chennai and others " 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."

5. 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 reported in (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 dependants 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.”

6. The 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 members] 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. 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.

8. In the light of the above decisions supra, no relief can be granted. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

mst
To

1. The Secretary, Tamilnadu Govt. Transport Department,
Secretariat, St. George Fort, Rajaji Salai,
Chennai 600009.
2. The Managing Director,
Tamil nadu Transport Corporation,
Pallavan Salai, Pallavan House, Chennai 600 002.

+1cc to Government Pleader SR.No.25945

W.P.No.9141 of 2022

SSN(CO)
GMY(02/05/2022)