



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.03.2022**

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 22446 of 2021

B.Sivakala

... Petitioner

Vs.

1. The Principal Director,
Highways Department,
Guindy,
Chennai - 600 025.

2. The Divisional Engineer,
Highways Construction and Maintenance,
Nagercoil.

3. The Assistant Divisional Engineer,
Highways Construction and Maintenance,
Nagercoil.

4. The Supervising Engineer,
Highways Construction and Maintenance,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the third respondent in (Circular) குறிப்பாணை எண்.1875/2020/ஆ3 dated 07.08.2020 as illegal, quash the same and consequently directing the respondents to appoint petitioner on compassionate ground on account of death of her father Late.Bagavathiyappan by considering her application dated 09.08.2019.

For Petitioner : Mr.J.Senthil Kumaraiah
For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

O R D E R

The order of rejection rejecting the claim of the writ petitioner for compassionate appointment in proceedings dated 07.08.2020 is under challenge in the present Writ Petition.



2. The father of the writ petitioner one Bagavathiyappan was employed as Gang Mazdoor and died on 15.03.2011, while he was in service. The elder brother of the petitioner submitted an application seeking appointment on compassionate ground on 29.01.2014. The said application was rejected by the Competent Authorities. Thereafter, the brother of the writ petitioner filed a Writ Petition and the order of rejection was set aside by this Court and the matter was remanded back on 09.03.2018. Pursuant to the order of remand, the case of the elder brother of the petitioner was under consideration on the hands of the Competent Authority. Unfortunately, the elder brother of the petitioner was also died on 13.06.2019. After the death of the brother, the petitioner filed an application on 09.08.2019.

3. The very scheme of compassionate appointment cannot be extended to provide one appointment to a family. It is not as if, one legal heir may submit an application and after several years, another legal heir may submit an application, such application is to be considered for providing appointment. In the event of stretching the scheme of compassionate appointment, it will cause infringement of right to large number of citizens who are all longing to secure public employment through open competitive process and by way of reservation. Therefore, the Government cannot stretch the scheme of compassionate appointment. The scheme itself is in violation of Article 14 and 16 of the Constitution of India. The scheme of compassionate appointment is only for the purpose of mitigating the circumstances arising on account of sudden death of the employee. Therefore, an exemption to the appointment is carried out through the scheme of compassionate appointment as concession. All such exemption constituted under the Rule must be restricted so as to ensure that the appointments under the constitutional scheme are made in all circumstances and equal opportunities are to be provided to the eligible citizens, who are all aspiring to secure public employment. Therefore, the scheme is to be implemented in such a manner to ensure that the fundamental rights of the citizens under Article 14 and 16 are not infringed.

4. Under the scheme of compassionate appointment, there is no examination and there is no assessment of merit, eligibility or suitability. A mere death provides an appointment. In the event of providing large scale appointments under the compassionate ground, no doubt, the administrative efficiency will be peril as there is no merit assessment. This exactly is the reason why the Constitutional Courts have repeatedly held that the scheme being the concession, cannot be claimed as a right and the scheme is in violation of Article 14 and 16 of the Constitution of India. Thus, the concession extended must be granted only to the deserving families to mitigate the circumstances. The appointment of compassionate ground cannot be granted after a lapse of many years.



5. Efflux of time would be a ground to draw a factual inference that the penurious circumstances arose on account of sudden death of the employee became vanished. Therefore, the application beyond the prescribed period itself is untenable. There cannot be any relaxation of such conditions as the scheme itself is unconstitutional and relaxation would cause further infringement of right and thus, it is impermissible.

6. In the present case, the brother of the petitioner submitted an application which was rejected and the brother died in the year 2019. Thereafter, the petitioner submitted an application after a lapse of about 8 years from the date of death of the deceased employee. Thus, there is no scope for considering the claim of the petitioner for compassionate appointment.

7. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vji

To

1. The Principal Director,
Highways Department,
Guindy, Chennai - 600 025.
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Highways Construction and Maintenance, Nagercoil.
3. The Assistant Divisional Engineer,
Highways Construction and Maintenance, Nagercoil.
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+1 CC to M/s.SPL GP (SR-11195[F] dated 10/03/2022)

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MGJ(05.04.2022) 3P 6C