



WP Nos.26723 & 16865 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP Nos.26723 and 16865 of 2019

Mr.J.Arun Prasad

... Petitioner in
WP No.26723 of 2019
and
WP No.16865 of 2019

VS

1. Central Administrative Tribunal
Represented by its Registrar,
High Court Building,
City Civil Court Complex,
Chennai.
- 2.Union of India,
Represented by the General Manager,
Southern Railways, Park Town,
Chennai- 600003.
- 3.The Chief Personnel Officer,
Head Quarters Office,
Personnel Branch,
Chennai - 600 003.



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4.The Chief Workshop Manager,
Carriage and Wagon Works,
Perambur,
Chennai 600 023.

5.Mr.J.Ashok

... Respondents in both WPs

PRAYER in WP No.26723 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari calling for the records and quash the order passed by the respondent in OA No.1544 of 2014 on 06.07.2016 and consequently directing the second respondent to appoint the petitioner on compassionate appointment in any of the post in Indian Railways.

PRAYER in WP No.16865 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari calling for the records and quash the order passed by the respondent in OA No.87 of 2019 on 01.02.2019 refusing to quash the proceedings of the second respondent in No.PB/CS/30/Court Case/Ashok dated 28.09.2018 and consequently directing the second respondent to appoint the petitioner on compassionate appointment in any of the post in Indian Railways.

For the Petitioner : Mr.Senthilvelan
Senior Counsel
for M/s.Gnanadesikan Law Associates



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For the Respondents : Mr.P.T.Ramkumar,
Standing Counsel
for R2 to R4
Mr. Venkatramani
Senior Counsel
for S.Srinivasan for fifth respondent
R1- Tribunal

COMMON ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The writ petitions have been filed challenging the order passed by the Central Administrative Tribunal in OA No.1544 of 2014 dated 06.07.2016 and OA No.87 of 2019 dated 01.02.2019.

2. Since the petitioner in both the writ petitions is same and issue involved in the writ petitions is also one and the same, a common order is being passed in these writ petition.

3. Brief facts of the case:

3.1. The petitioner's father was working as Senior Technician in the respondent Railways and he died in harness on 05.10.2004. The father of



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the petitioner had two wives. The petitioner's father divorced his first wife on 13.08.2003. On 31.10.2003, the petitioner's father has married petitioner's mother. In all the records of the Railways, petitioner's name along with his mother and sisters were entered, pursuant to which legal heirship certificate was also obtained on 14.03.2005 after the demise of his father. Subsequently, the petitioner made a representation on 07.01.2008 to the second respondent seeking appointment on compassionate grounds. However, the second respondent, vide proceedings dated 14.09.2010 rejected his representation on the ground that as per Railway Board's Letter dated 02.01.1992, children born through the second wife through the illicit relationship when the first wife was alive and the first marriage was in subsistence are not eligible for appointment on compassionate grounds.

3.2. The petitioner came to know that the son of the first wife of his father namely Ashok, the fifth respondent herein had filed OA No.1544 of 2014 before the Tribunal seeking appointment on compassionate grounds. The Tribunal, by order dated, 06.07.2016 had directed the authorities to consider his representation even though the said Ashok was aged 45 years.



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In the said application, the petitioner was not made a party. The said order is under challenge before this Court in WP No.26723 of 2019.

3.3. Aggrieved by the said order dated 06.07.2016, the petitioner made a fresh application dated 27.07.2018 after a lapse of eight years to the second respondent to consider him for appointment under the compassionate scheme. The said representation dated 27.07.2018 of the petitioner was rejected by the second respondent by its communication letter dated 28.09.2018. The said order was under challenge before the Central Administrative Tribunal in OA No.87 of 2019. The Tribunal, by order dated 01.02.2019 had dismissed the said application on the ground that the respondent has passed a rejection order on 14.09.2010 and the petitioner has not chosen to take steps to challenge the said order. The said order passed in favour of the fifth respondent herein, who is the son of his father through his first wife is under challenge before this Court in WP No. 16865 of 2019.



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4. Learned counsel for the petitioner would submit that the respondent railway has issued a offer letter dated 11.07.2018 in favour of the fifth respondent. Subsequently the respondent Railway came to know that the fifth respondent is not eligible and therefore the respondent Railway vide letter dated 27.05.2019 had rejected the claim of the fifth respondent on the ground that he did not possess the required minimum educational qualification for appointment on compassionate grounds. Therefore, there is no legal embargo for the respondent Railway to consider the case of the petitioner for providing employment on compassionate grounds and therefore seeks for allowing the writ petitions.

5. Learned counsel appearing for the respondent Railway Board stoutly opposed the said contention of the petitioner by inter alia contending that the said OA No.87 of 2014 filed by the petitioner was rightly dismissed by the Tribunal on the ground that the petitioner did not challenge the rejection order dated 14.09.2010 passed by the second respondent, but thereafter he made another representation to the second respondent to consider his request for appointment on compassionate grounds after the



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lapse of eight years would not give statutory right to the petitioner.

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6. Learned Standing Counsel for the respondent Railway Board further submits that there is an inordinate delay on the part of the petitioner either to approach the authority concerned or the Tribunal. Thus, there is no proper explanation given by the petitioner for the inordinate delay in approaching the authority concerned or the Tribunal. The learned Standing Counsel further submits that appointment on compassionate grounds is provided to the legal heirs of the deceased employee, who died in harness, only to provide financial assistance for the day to day affairs of the family since, deceased employee would be the sole bread winner of the family. In support of this contention, he submits that the father of the petitioner died on 15.10.2004, but however, now after a lapse of 19 years, appointment cannot be granted under the compassionate Scheme. He further insists that as the petitioner has already been maintaining the family for all these years and at this belated stage, there is no need or necessity for providing financial assistance to him. Such assistance was required only at the time of sudden death of the employee. In support of his contention, he relies on the



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decision of the Hon'ble Supreme Court in the case of ***The State of West Bengal vs Debabrata Tiwari & ORS. ETC. ETC. reported in 2023(3)***

SCALE. The relevant portion of the order is extracted hereunder:

7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because



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on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

7.4. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.

7.5. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of



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several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a



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consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

8. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in Lindsay Petroleum Co. vs. Prosper Armstrong, (1874) 3 PC 221 as under:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is



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founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy.” Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under [Article 226](#) of our Constitution, came up for consideration before a Constitution Bench of this Court in [Moon Mills Ltd. vs. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450](#). In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under [Article 226](#) of the Constitution.



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In State of M.P. vs. Nandlal Jaiswal, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-



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party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.” While we are mindful of the fact that there is no period of limitation provided for filing a writ petition under [Article 226](#) of the Constitution, ordinarily, a writ petition should be filed within a reasonable time, vide [Jagdish Lal vs. State of Haryana](#), (1997) 6 SCC 538; [NDMC vs. Pan Singh](#), (2007) 9 SCC 278.

7. Therefore, according to the Standing Counsel for the respondent Railway Board, in view of the decision of the Hon'ble Supreme Court cited supra, there is no merit in the present writ petitions and seeks for dismissal of the same.

8. We have carefully analyzed the submissions made on behalf of both the parties and perused the materials available on record.



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9. The point for consideration in the present writ petitions is whether the writ petitions are liable to be dismissed on the ground of delay and laches.

10. The petitioner is the legal heir of the second wife of the deceased employee namely Jayaraman, who died on 05.10.2004, while he was in service. The aforesaid deceased Jayaraman had two wives. He divorced his first wife on 13.08.2003 and he married the second wife i.e. the petitioner's mother, on 31.10.2003. Petitioner is the son of the second wife, born seven years before marriage. The contention of the respondents is that the petitioner was born on 10.05.1996. At that time, the marriage between the deceased employee and his first wife was in subsistence. Subsequently, the deceased father divorced his first wife. Therefore, on this ground, the petitioner is not entitled for appointment under compassionate scheme. Further, the petitioner has made first representation before the authority concerned, seeking employment on compassionate grounds after a lapse of 4 years and the said application came to be rejected by the second respondent on 14.09.2010 for the reason that he is not entitled for



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appointment on the ground that at the time of his birth, the marriage between his father and his first wife was in subsistence. But the petitioner did not challenge the said order. Therefore, the said order has become final. After a period of eight years, he made another representation to the respondent railways on 27.07.2018 and the said representation also came to be rejected on 28.09.2018. The said order was challenged before the Tribunal in OA No.87 of 2019 and the same was dismissed on the ground that the petitioner did not take steps to challenge the earlier order of rejection passed by the second respondent on 14.09.2010.

11. Considering the decision of the Hon'ble Supreme Court cited supra and the facts stated as above, as the petitioner has submitted his application and also approached the Court belatedly, the claim of the petitioner seeking employment on compassionate grounds cannot be entertained on the ground of delay and laches. Hence, the orders of the Tribunal is perfectly valid and therefore there is no need to interfere with the impugned orders, especially when the authority concerned has to be approached seeking compassionate appointment within a reasonable time as per the regulations and decision of the Hon'ble Supreme Court.



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12. In the present cases, there are no bona fide reasons for the inordinate delay in approaching the authority concerned seeking employment on compassionate grounds. The deceased employee Jayaraman died in the year 2005 and now at this stage, after a lapse of 19 years, relief cannot be granted, in the light of the decision of the Hon'ble Supreme Court cited supra. Hence, there is no force in the contention of the petitioner to interfere with the orders of the Tribunal.

13. In view of the above discussions, we come to the conclusion that nothing warrants to interfere with the orders of the Tribunal. There is no merit in the Writ Petitions. Hence, WP No.26723 of 2019 and WP No.16865 of 2019 are dismissed. There shall be no order as to costs. Consequently, WP No.26108 of 2019 is closed.

[D.K.K., J.] [P.D.B., J.]
21.11.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn



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To

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and

P. DHANABAL, J.

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