



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.06.2024

Pronounced on : 31.07.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**W.P.No.3836 of 2021****and****W.M.P.No.4392 of 2021**

K.Saravanan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by Principal Secretary to Government,
School Education Department, Secretariat, Chennai – 600 009.
2. The Commissioner of School Education,
Chennai – 600 006.
3. The Joint Director (Personnel) of School Education,
Chennai – 600 006.
4. The Chief Educational Officer,
Kancheepuram.
5. The District Educational Officer,
Kancheepuram , Kancheepuram District.
6. The Assistant Elementary Educational Officer,
Kundrathur Union, Padappai – 601 301.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent, relating to the orders in (1) Pro.Na.Ka.No.1490/A1/2020 dated



05.06.2020, (2) Pro.Na.Ka.No.9524/A1/2006 dated 28.09.2007 issued on 05.06.2020 and (3) Pro.Ni.Mu.No.8737/A1/07 dated 09.12.2010 issued on 05.06.2020 to quash the same and to issue consequential directions to the respondents to appoint the petitioner on compassionate grounds in a suitable post commensurate with his educational qualification.

For Petitioner : Mr.R.Srihari for Mr.M.Ravi

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The brief facts that are relevant for disposal of this Writ Petition are as under:-

The father of the petitioner herein viz., Thiru.R.Kulasekaran while working as Head Master, Panchayat union, Elementary School, South Malayampakkam, Kundrathur Union, Kancheepuram District expired on 05.01.1993 leaving behind his wife, daughter and the petitioner herein, who were aged 41 years, 11 years and 8 years respectively as on the date of demise of Late Thiru.R.Kulasekaran. Thereafter, the mother of the petitioner submitted an application on 22.09.1993 seeking compassionate appointment for the petitioner herein, who was minor by then to provide him employment after attaining the age of 18 years and completing the school studies. The said application was forwarded to the District Educational Officer, Kancheepuram



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in Letter bearing ஓ.மு.எண்.234/அ1/93 dated 06.10.1993, and in turn the District Educational Officer, Kanchipuram forwarded the same to the Special Officer, Chief Minister's Special Cell, Chennai in Letter bearing ந.க.எண்.3983/எ1/93 dated 05.08.1994. While so, the petitioner submitted another application on 09.07.2001, seeking appointment on compassionate ground. By the date of submission of the said application, the petitioner was aged 16 years. Due to ban on compassionate appointment that was existing at the relevant point of time, the application submitted by the petitioner was not considered and finally, the petitioner was asked to submit the required certificates and accordingly, the petitioner submitted the required certificates on 27.12.2006. It is thereafter, the Respondent No.5 on having considered the claim of the petitioner, rejected the same on the ground that the family of the petitioner is not under indigent circumstances through proceedings bearing ந.க.எண்.9524/அ1/2006 dated 28.09.2007. Thereafter the petitioner submitted yet another application on 28.10.2010 and the same was also once again rejected through proceedings bearing நி.மு.எண்.8737/அ1/07 dated 09.12.2010 on the ground that the request of the petitioner cannot be reconsidered as the family of the petitioner is not under indigent circumstances. It is thereafter on 08.05.2020, the petitioner submitted yet



another representation without making any reference to his application submitted in the year 2001 as well as in the year 2010 requesting for compassionate appointment by placing reliance on the application dated 22.09.1993 submitted by his mother. It is in response to the said representation, the Respondent No.5 through proceedings bearing ந.க.எண்.1490/அ1/2020 dated 05.06.2020 informed the petitioner that his claim for compassionate appointment was already rejected on two earlier occasions through proceedings dated 28.09.2007 and 09.12.2010 and copies of the same were furnished to the petitioner. It is aggrieved by the said proceedings dated 05.06.2020 and previous proceedings dated 28.09.2007 and 09.12.2010, the petitioner approached this Court by filing the present Writ Petition.

2. Heard Mr.R.Srihari, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate appearing for the respondents and perused the entire material on record.

3. Though the claim of the petitioner for compassionate appointment was rejected by the Respondent No.5 through proceedings dated 28.09.2007



and 09.12.2010, the petitioner claims that the same were not communicated to him. Even assuming that the same were not communicated to the petitioner, the petitioner having submitted an application for compassionate appointment in the year 2001 and having submitted the required certificate in the year 2007, has chosen to approach the respondents once again only in the year 2010 by submitting a representation dated 28.10.2010. Even if the claim of the petitioner that the proceedings dated 09.12.2010 was not communicated to him, he should have pursued the matter with the Respondent No.5 after submitting the representation dated 28.10.2010. But, there is no move on the part of the petitioner either to pursue the said representation dated 28.10.2010 or to take further steps against the respondents seeking Compassionate Appointment. But it is only after a lapse of almost a decade i.e., on 05.03.2020, the petitioner submitted another representation to the respondents seeking compassionate appointment without making any reference to the application submitted by him in the years 2001 and 2010.

4. From this, it is evident that the petitioner has not chosen to take any steps to pursue his claim for compassionate appointment from the year 2001 to till the year 2010. By the date of submission of his application in the year 2001, the petitioner was aged 16 years and by the date of submission of his



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application in the year 2010, he was aged 25 years. As on the date of demise of the petitioner's father, the mother of the petitioner was aged 41 years and as seen from the counter-affidavit, she is very much eligible for compassionate appointment. But for the reasons best known, the mother of the petitioner did not seek compassionate appointment for herself, but requested to provide employment to the petitioner after the petitioner attained the age of majority and acquiring educational qualifications. This itself shows that the family of the petitioner was not under indigent circumstances. Had the family of the petitioner was in financial crisis due to death of the father of the petitioner, the mother of the petitioner ought to have requested for employment for herself or her daughter, who was aged about 11 years by then. In both the orders issued by the Respondent No.5 dated 28.09.2007 as well as 09.12.2010, it was categorically mentioned that the family of the petitioner is not in penury condition. The appointment on compassionate grounds is an exception to Article 16 of the Constitution of India and providing a concession in favour of the family of the deceased Government Servant in order to face the financial crisis that has occurred due to sudden demise of the sole bread winner. The same does not create any right for appointment in the public service, and the same also cannot be claimed as a matter of right. It is only on satisfying the indigent circumstances of the family of the deceased



Government Servant and on satisfying the eligibility criteria for being appointed to the public service. One can claim for appointment on compassionate grounds to meet the immediate crisis that has occurred due to the death of the Government Servant. Such a concession extended in favour of the family members of the deceased Government Servant under a scheme cannot be stretched to claim the appointment to a public service as a matter of right that to after a long lapse of time.

5. The law dealing with compassionate appointment is well settled. The Hon'ble Apex Court in a recent decision in the case of ***“State of West Bengal -vs- Debabrata Tiwari and others”*** reported in **2023 SCC online SC 219** held as under:-

“ 32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and



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must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.



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33. 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 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



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whether a case for the grant of compassionate appointment has been made out for consideration.

34. 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.

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



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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 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.

36. 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. v. Prosper Armstrong, [1874] 3 P.C. 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



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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 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



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taking the one course or the other, so far as it relates to the remedy.”

6. In yet another decision, the Hon'ble Apex Court dealt with the similar aspect in Civil Appeal No.6958 of 2022 dated 30.09.2022, wherein it was held as under:-

“ 9. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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 such family a post much less a post held by the deceased.



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9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

9.2 Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.”

From the above, it is evident that the law in this regard is well settled.



7. The reliance placed on by the learned counsel for the petitioner on a decision of the learned Single Judge in W.P (MD) No.5879 of 2012 dated 03.06.2014 to say that 'the minor is entitled to make an application within three years from the date of attaining majority', has no relevance to the facts of the case on hand, especially in the context of the fact that the claim of the petitioner was negated by the respondents on the ground of ineligibility of the petitioner to claim such compassionate appointment. Though the petitioner claimed that the impugned proceedings dated 28.10.2007 and 09.10.2010 were not communicated to him, challenged the said proceedings also without seriously contradicting the contents of the said proceedings. If really the petitioner or his family is under indigent circumstances, the petitioner ought to have pursued the representation submitted by him in the year 2010 by taking appropriate steps thereafter. But, there is no explanation that is coming forth from the petitioner for not pursuing his claim for compassionate appointment from the year 2001 till the year 2010, and thereafter till the year 2020.

8. As seen from the counter-affidavit, the mother of the petitioner is already drawing a family pension and a specific averment is also made in the counter-affidavit contending that the family of the petitioner is not under



indigent circumstances. But the petitioner has neither placed any material before this Court to contradict the said averment made in the counter-affidavit nor filed any reply-affidavit contradicting the same.

9. In the light of the above, this Court does not find any merit in the Writ Petition and the same is accordingly dismissed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
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