

(2011) 08 MAD CK 0351
In the Madras High Court
Case No : Writ Petition No. 26502 of 2009

Janaki

APPELLANT

Vs

The Director of School Education, The District Educational
Officer and The Head Master, Government High School

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16, 226

Citation : (2011) 08 MAD CK 0351

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P.I. Thirumurthy, for the Appellant; I. Arokiasamy, G.A. (Edn), for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition, seeking to challenge an order of the second respondent viz., District Educational Officer, Karur dated 16.11.2009 and after setting aside the same seeks for a direction to consider the claim of compassionate appointment for the Petitioner's son based on his educational qualification.

2. The writ petition was admitted on 21.12.2009.

3. It is seen from the records that the petitioner's husband Murugesan, who was working as Office Assistant in the Government High School P. Thotta kurichidied while in service on 20.12.1999. After his death, he has left the Petitioner, his wife and three sons M/S. Chandrasekaran, Gunasekaran and Ramesh as his legal heirs. When his terminal benefits were not given, the petitioner filed a suit in O.S. No. 630 of 2000, claiming declaration that she was the legally married wife of Late Murugesan and that she is eligible for all benefits payable on account of his death. The suit was decreed in favour of the Petitioner by judgment and decree dated 29.04.2003. It was thereafter, the Petitioner sent a presentation

seeking for grant of compassionate appointment for her second son viz., Gunasekaran. In there presentation she claimed that her application for terminal benefits was returned informing that she was the second wife of Late Murugesan and hence, she filed asuit and the suit was decreed in her favour. Thereafter,due to mental agony, she went away to some town station. Therefore, there was a delay in seeking compassionate appointment. Her application was processed by the second respondent and certain details were also called for. However, the Petitioner was informed by the impugned order that since the death of the late Murugesan was on 20.11.1999 and she had claimed compassionate appointment only on 01.03.2006, she is not eligible for grant of compassionate appointment and that the claim was belated. Challenging the same, the writ petition came to be filed.

4. On notice from this Court, the second respondent has filed a counter affidavit dated Nil (February 2010). In the counter affidavit, the ground taken was that as per Government Letter No. 202 Labour and Employment Department, dated 08.10.2007, a claim for compassionate appointment will have to be made within three years from the date of death of the deceased employee. Since the Petitioner's claim was time barred, no relief can be given.

5. The Learned Counsel for the Petitioner placed reliance upon the following judgments of the Division Bench of this Court:

i) Indiraniammal v. The Chief Engineer(Personnel), The Tamil Nadu Electricity Board W.A. No. 3050 of 2003 dated 08.03.2005

ii) The Chief Engineer/Personnel, Tamil Nadu Electricity Board v. B. Suder W.A. No. 1652 of 2006 dated 30.03.2009.

iii) The Superintending Engineer, Madurai Electricity Distribution Circle v. V. Jaya reported in 2008 (3) CLT 152.

6. All the three judgments were relating to Tamil Nadu Electricity Board and different proceedings were issued by the Board and due to that fact, there were several orders passed by this Court. These judgments were rendered on the factual aspect of various Board circular and proceedings but no decision of the Supreme Court which have a bearing on the case had been considered.

7. The Supreme Court has held that a claim of compassionate appointment has to be strictly construed as it is an exception to Articles 14 and 16 of the Constitution. The fact that the Petitioner has to run to the Civil Court for establishing her legal right cannot be a ground to get over the limitation period.

8. The Learned Counsel for the Petitioner placed reliance upon the judgment of the Supreme Court in Syed Khadim Hussain v. State of Bihar and Ors. reported in (2006) 9 SCC 195 for contending that the Supreme court granted relief even in case of belated application. In that case, the Supreme Court had exercised extraordinary power under Article 142 of the Constitution, which power is not available to the High Court under Article 226 of the Constitution. In paragraph 6

of the judgment, it was held as follows:-

6....In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the Appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The appeal is disposed of in the above terms.

9. On the contrary, the Supreme Court very recently negated similar claim in the two following judgments. The Supreme Court vide its judgment in Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, had observed in paragraphs 15 and 20 as follows:

15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Never the less, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(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) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(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.

(iv) Compassionate employment is permissible only to one of the dependants of

the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

10. The Supreme Court in Civil Appeal No. 2206 of 2006, dated 05.04.2011 in Local Administration Department and Anr. v. M. Selvanayagam @ Kumaravelu in paragraphs 7 to 9 held as follows:

7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anaemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganised way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

9. In this case the Respondent was only 11 years old at the time of the death of his father.

The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In

the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the Respondent did not come under the scheme of compassionate appointments.

11. In the light of the above, there are no infirmities or irregularities in the order passed by the Respondents. Hence, the writ petition stands dismissed. However, there will be no order as to costs.