

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.7.2013

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.10187 of 2012

Balaji

... petitioner

Vs.

1. Superintend Engineer  
Electricity Board, Vellore

2. Chairman Electricity Board  
Mount Road, Chennai

... Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to provide a suitable job to the petitioner on compassionate ground for the death of petitioner/father in the electricity board under the circumstances of the case.

For petitioner : Mr.R.Margabandhu

For respondents : Mr.M.Fakkir Mohideen

O R D E R

This writ petition has been filed praying that this court may be pleased to issue a Writ of Mandamus directing the respondents to provide a suitable job to the petitioner, in the Tamil Nadu Electricity Board, on compassionate grounds, due to the death of the petitioner's father.

2. It has been stated that the petitioner's father, namely, Pattabiraman, was working as a helper in the Tamil Nadu Electricity Board, at Sholinghur. While so, the petitioner's father had died, on 2.4.1993. At the time of the death of the petitioner's father, the petitioner was a minor. His date of birth is 2.6.1985. The petitioner had made an application to the respondents, for appointment on compassionate grounds, on 17.6.2002. On the date of the death of his father, the petitioner was 8 years old and there was no other male member in the family. The family of the petitioner was under severe financial strain, due to the death of the earning member of the family.

3. It has been further stated that the petitioner had made an application, for appointment on compassionate grounds, on 17.6.2002. A reply had been issued to the said application, on 26.2.2002, stating that the application for the appointment on compassionate grounds should have been made, within 3 years from the date of the death of the employee in question. The petitioner has stated that, as the death of his father was prior to the year, 1995, the pre condition that the application should have been made within 3 years from the date of the death of the earning member of the family would not be applicable to the facts of the present case, as stated in the proceedings of the first respondent, dated 26.6.2002.

4. It has also been stated that the Government Order in G.O.Ms.No.120, Labour and Employment Department, dated 26.6.1995, would not be applicable to the case in hand, as the death of the government servant in question had taken place, on 2.4.1993, prior to the coming into force of the said Government Order.

5. The learned counsel appearing for the petitioner had also relied on the decision of the learned single judge of this Court, in SRIDEVI Vs. THE SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT, CHENNAI AND OTHERS, dated 19.9.2011, in W.P.No.9528 of 2008. In the said order, the learned single Judge had held that the claim for compassionate appointment cannot be denied, if the family of the government servant, who had died in harness, was in indigent circumstances.

6. A counter affidavit had been filed on behalf of the respondents, wherein, it has been stated that the petitioner's father had died, on 2.4.1993. An application had been submitted, by the petitioner, on 17.6.2002, before the first respondent, seeking appointment on compassionate grounds. The request of the petitioner had been rejected, on 26.6.2002, as the application had been submitted after a lapse of nine years from the date of the death of the deceased employee, contrary to the proceedings in Permanent B.P.Ms.(FB) No.46 (Adm. Branch) dated 13.10.1995.

7. It has also been stated that, even in the Government Order, in G.O.Ms.No.120, Labour and Employment Department, dated 26.6.1995, it has been stated that the application for compassionate appointment should be made, within 3 years from the date of the death of the employee concerned. While so, the petitioner has made an application, only on 17.6.2002, after nearly 9 years after the death of his father, who was working as a helper in the Tamil Nadu Electricity Board, at Sholinghur. Therefore, his application, seeking appointment on compassionate grounds, had been rejected, on 26.6.2002.

8. In view of the submissions made by the learned counsels appearing for the petitioner, as well as the respondents and on a perusal of the records available, this Court is of the considered

view that the reliefs prayed for by the petitioner, in the present writ petition, cannot be granted. The father of the petitioner, who was working as a helper in the Tamil Nadu Electricity Board, at Sholinghur, had died in harness, on 2.4.1992. At the time of the death of the father, the petitioner was nearly 8 years of age, having been born on 2.6.1985. The petitioner had made an application for appointment on compassionate grounds, on 17.6.2002, only after nearly 9 years from the date of the death of the employee concerned. As per the proceedings in Permanent B.P.Ms.(FB) No.46 (Adm. Branch), dated 13.10.1995, and in the Government Order, in G.O.Ms.No.120, Labour and Employment Department, dated 26.6.1995, the petitioner ought to have submitted an application for appointment on compassionate grounds, within 3 years from the date of the death of the government servant concerned. However, in the present case, the application had been made after nearly 9 years from the date of the death of the employee in question. Even otherwise, the petitioner was not a major at the time of the submission of the application, on 17.6.2002. Therefore, the application of the petitioner, dated 17.6.2002, had been rightly rejected by the first respondent, in his proceedings, dated 26.6.2002.

9. The following are some of the decisions relating to appointments on compassionate grounds.

9.1. In State Bank of India and another Vs. Somvir Singh (2007 (4) SCC 778), the Supreme Court had held that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner, providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees who had died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer. The claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of a scheme or instructions, as the case may be.

9.2. In I.G.(Karmik) and others Vs. Prahalad Mani Tripathi (2007(6) SCC 162), the Supreme Court



had held that compassionate appointment must be in consonance with the Constitutional scheme of equality enshrined in Articles 14 and 16 of the Constitution of India.

9.3. In Union Bank of India and others Vs. M.T.Latheesh (2006(7) SCC 350), the Supreme Court had held that grant of employment on compassionate grounds in all cases, would shut the door for employment to the increasing number of unemployed youth.

9.4. In Mohan Mahto Vs. Central Coal Field Ltd., and others (2007(8) SCC 549), the Supreme Court had recognised the fact that appointment on compassionate grounds are an exception to Article 16(1) of the Constitution of India.

9.5. In State Bank of India and others Vs. Jaspal Kaur (2007(9) SCC 571), the Supreme Court had held that a major criterion while appointing a person on compassionate grounds should be the financial condition of the family of the deceased person. The appointment under the scheme of compassionate appointment is at the discretion of the authority concerned. The discretion is to be exercised keeping in view the scheme and the object and the rationale behind it. However, it cannot be claimed as a matter of right.

9.6. "In H.Anwar Basha Vs. The Registrar General, Madras High Court (2008 (3) CTC 785), a Division Bench of this Court had held that the object of compassionate appointment is to mitigate the sufferings of the bereaved family of the Government servant who had died in harness leaving his family in indigent circumstances.

10. In such circumstances, the petitioner is not in a position to show sufficient cause or reason for this Court to interfere with the proceedings rejecting the request of the petitioner for appointment on compassionate grounds. It is clear that the appointments on compassionate grounds are made only to help the family in distress, due to the sudden death of the breadwinner of the family, and if the members of the family are found to be in indigent circumstances. Such appointments are made to help the family to tide over the immediate crisis arising due to the death of the earning member of the family. It cannot be considered as an avenue for employment in the normal course. In view of the decisions rendered by the various courts of law, the belated request of the petitioner for

appointment on compassionate grounds does not deserve serious consideration, at this late stage. In such view of the matter, the writ petition is liable to be dismissed. Hence, it is dismissed. No costs.

Sd/  
Deputy Registrar

//True Copy//

Sub.Asst.Registrar

To:

1. Superintending Engineer  
Electricity Board, Vellore

2. Chairman Electricity Board  
Mount Road, Chennai

1 CC to Mr.M.Fakkir Mohideen Advocate, S.R.No.40127

1 CC to Mr.R.Margabandhu Advocate, S.R.No.40262

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VG(CO)  
JJM 06.09.2013



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