



W.P. No. 6636 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 6636 of 2023

D.R.Velan

... Petitioner

-VS-

1. The State of Tamil Nadu,
Secretary to Government,
School Education Department,
Secretariat,
Chennai-09.
2. The Director of School Education,
College Road,
Chennai-06.
3. The Chief Educational Officer,
Cuddalore-District.
4. The District Educational Officer,
Cuddalore-District.
5. The Assistant Elementary Educational Officer,
Kurinchipadi,
Cuddalore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to consider the Petitioner's representation dated 10.10.2022 for provide



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employment to the Petitioner on the ground of compassionate appointment arises due to the death of his father Mr. D.Ramanujam who died on 16.06.1992 while he was working as teacher in the Panchayat Union Primary School, Thimmaravuthan Kuppam.

For Petitioner : Mr. S.Sathish
For Respondents : Mrs. R.Anitha
Special Government Pleader

ORDER

Heard Mr. S.Sathish, Learned Counsel for the Petitioner and Mrs. R.Anitha, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The father of the Petitioner, viz., D.Ramanujam, who was employed as Teacher in Panchayat Union Primary School, Thimmaravuthan Kuppam, Cuddalore District, died in harness on 16.06.1992 leaving behind the following legal heirs as per the Legal Heirship Certificate dated 31.08.1994 produced by the Petitioner:-



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S. No.	Name of the Legal Heir	Relationship with the deceased employee	Age as on 31.08.1994
1.	Tmt.Kasiammal	Wife	36
2.	Selvi. Pushpa @ Santhi	Daughter	17
3.	Selvi. Janaki	Daughter	14
4.	Selvi. Savithri	Daughter	13
5.	Selvi. Latchumi	Daughter	11
6.	Selvan. Velan	Son	9

The mother of the Petitioner, viz., Tmt. Kasiammal, had made a representation dated 24.03.1997 for appointment of her daughter, viz., Shanthi, on compassionate grounds, but it was not considered as it was beyond four years from the time of demise of the deceased employee. Long thereafter, the Petitioner had made a representation dated 05.03.2008 seeking appointment on compassionate grounds, which was rejected by Proceedings in Na. Ka. No. 5522/A1/08 dated 19.08.2008 passed by the District Elementary Educational Officer, Cuddalore, observing as follows:-

“ இவ்விண்ணப்பதாரரின் மனுக்களில் இத்திட்டத்தின் முக்கிய அம்சங்களைப் புறக்கணித்தும் மேற்கண்ட விதிகளின்படி பரிசீலிக்காமல் வட்டாச்சியரால் குடும்பத்தில் உள்ள நபரில் எவரும் அரசு மற்றும் தனியார் துறையில் பணிபுரியவில்லை என்ற சான்று நல்கிய சூழ்நிலையில் இறந்த அரசு ஊழியரின் மனைவி உரிய வயது இருந்தும் முத்த வாரிசுக்கு பணிவாய்ப்பு கோராமல் மற்ற வாரிசுதாரர்கள் மறுப்பின்மைக் கடிதம் அளித்துள்ள நிலையில் மட்டுமே 6-வது



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வாரிசுதாரருமான திரு. டி.ஆர்.வேலன், பட்டப்படிப்பு முடிக்கும் அளவுக்கு குடும்பம் வசதியுள்ளது எனவும் கருதப்படுகிறது.

மேலும் வாரிசு சான்று (ஒருங்கிணைந்த சான்று) அரசு ஊழியர் இறந்து 15 ஆண்டுகள் கழித்து கடந்த 12.8.2006-ல் பெறப்பட்டுள்ளது. அரசு ஊழியர் இறக்கும்போது மனுராருக்கு நான்கு மூத்த சகோதரிகள் திருமணமாகாத நிலையில் இருந்துள்ளனர். அவர்களுக்கு திருமணம் ஆகும் வரை காத்திருந்து அதன் பிறகு வாரிசு சான்று பெற்று கருணை அடிப்படையில் பணி கோரி விண்ணப்பத்துள்ளார். மேலும் வாரிசுதாரருக்கு அரசு ஊழியர் இறந்த நாளில் வயது 9 என வட்டாட்சியர் சான்றில் கூறப்பட்டுள்ளது. ஆகவே மனுதாரர் கோரிக்கை ஏற்க இயலாததால் இம்மனு நிராகரிக்கப்படுகிறது.

மேற்படி முன்மொழிவில் பெறப்பட்ட அனைத்து சான்றுகளும் இத்துடன் இணைத்து திருப்பி அனுப்பப்படுகிறது.”

In the absence of any challenge thereto, that decision had attained finality. The Petitioner leisurely appears to have made another representation dated 10.10.2022 seeking compassionate appointment and had filed the Writ Petition in W.P. No. 30506 of 2022 for directions for passing orders on the same, but it was unconditionally withdrawn on 16.11.2022 by him. Strangely, this Writ Petition for the same relief has been filed on 27.02.2023 without disclosing the earlier order of rejection dated 19.08.2008 and the filing of W.P. No. 30506 of 2022 and its withdrawal in this Court.



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3. Having due regard to the nature of controversy involved, it must be recapitulated that the legal position is well settled that the claim for compassionate appointment is an exception to Articles 14 and 16 of the Constitution which guarantees equality of opportunity to all eligible citizens to participate in the selection for any public employment. Appointment on the mere ground of descent, would be a direct infraction of Article 16 of the Constitution. The exception on which compassionate appointment is sustained is for the reason that it seeks to tide over the sudden crisis in the family of the deceased bread winner. It is equally trite that the appointing authority cannot be expected to keep a post vacant waiting for the dependent, who is a minor at the time of death of the employee, to attain majority to seek such appointment when the relevant Governmental Orders envisage that the application for compassionate appointment has to be made within three years from the date of death of the deceased employee. It would obviously mean that it was only those of the family members of the deceased employee, who were eligible at the time of his demise, who could be considered for such appointment, and it is not an indefeasible right that can be exercised by a minor on attaining majority. This view is fortified by the decisions of the Hon'ble Supreme Court of India in

Union of India -vs- Bhagwan Singh [(1995) 6 SCC 476], ***Haryana State***



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Electricity Board -vs- Hakim Singh [(1997) 8 SCC 85], ***Sanjay Kumar -vs- State of Bihar*** [(2000) 7 SCC 192], ***Syed Khadim Hussain -vs- State of Bihar*** [(2006) 9 SCC 195], ***National Institute of Technology -vs- Niraj Kumar Singh*** [(2007) 2 SCC 481], ***Mukesh Kumar -vs- Union of India*** [(2007) 8 SCC 398], ***Shreejith -vs- Deputy Director (Education), Kerala*** [(2012) 7 SCC 248] and ***Vijaya Ukarada Athor (Athawale) -vs- State of Maharashtra*** [(2015) 3 SCC 399].

4. That apart, the principles governing compassionate appointment have been succinctly explicated by the Hon'ble Supreme Court of India in ***State of West Bengal -vs- Debabrata Tiwari*** (Order dated 03.03.2023 in Civil Appeal Nos. 8842 to 8855 of 2022) in the following words:-

“7.2. 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 must*



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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*



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marital status of its members, together with the income from any other source.

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 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



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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.”

In the light of the said principles, it becomes apparent that the family of the deceased employee has been able to tide over the crisis with the passage of time and if any indulgence is now shown after 30 years from the time of death of the deceased employee brushing aside the germane aspects highlighted supra, it would unwittingly tantamount to unduly favouring the Petitioner to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced.

5. Moreover, inasmuch as the representation made by the Petitioner for compassionate appointment had been rejected by Proceedings in Na. Ka. No. 5522/A1/08 dated 19.08.2008 passed by the District Elementary Educational Officer, Cuddalore, which has attained finality, it would certainly precluded him from resurrecting the stale claim under the guise of making fresh representation dated 10.10.2022, as deplored by the Hon'ble Supreme Court of



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India in ***C.Jacob -vs- Director of Geology & Mining*** [(2008) 10 SCC 115], and

that too, after inordinate and unexplained delay of more than 14 years. The withdrawal of the Writ Petition in W.P. No. 30506 of 2022 seeking the same relief on 16.11.2022 also bars the Petitioner from filing a fresh Writ Petition for the same relief. It is needless to recapitulate here that the law is beyond cavil that what cannot be granted directly cannot be achieved indirectly. The effects of finality of litigation, as deduced from the authoritative pronouncements of the Hon'ble Supreme Court of India in ***M.Nagabhushana -vs- State of Karnataka*** [(2011) 3 SCC 408] and ***Union of India -vs- Major S.P.Sharma*** [(2014) 6 SCC 351], can be summarized as under:-

- (i) The doctrine of finality of litigation is an outcome of two age old salutary principles of public policy, viz., *interest reipublicae ut sit finis litium*, which signifies that it is in the interest of the State that there should be an end to litigation, and the other principle, viz., *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa*, conveys that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities or by adopting a procedure prescribed by law. The



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other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice. In the absence of such principle, great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a resourceful and malicious litigant may succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The universally acclaimed rule of *res judicata* has been evolved to prevent such anarchy.

- (ii) The rule of *res judicata* is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest. That is why it is perceived that the plea of *res judicata* is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. Any proceeding which has been initiated in breach of the rule of *res judicata* is prima facie a



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proceeding which has been initiated in abuse of the process of Court.

(iii) If a litigant has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. It also does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. Such consequence follows both to an order from which an appeal lies but has not been preferred, as well as to an order from which no appeal is provided. This precept is referred in legal parlance as '*constructive res judicata*'. In a country governed by the Rule of Law, finality of judgment is absolutely imperative to which great sanctity is attached and it is not permissible for the parties to re-open the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice.



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(iv) It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as *res judicata*, but if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.

6. It would be evident from the foregoing discussion that the Petitioner neither has any enforceable right to claim appointment on compassionate grounds from the Respondents, nor the Respondents have any legal obligation to take a decision on granting the same to him. In this backdrop, reference must be made to the ruling of the Hon'ble Supreme Court of India in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], in which it has been expounded as follows:-

"17. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen



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*and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs- State of U.P.** (AIR 1962 SC 1183)). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."*



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As such, there is absolutely no justification for issuing any direction to dispose the futile representation dated 10.10.2022 made by the Petitioner in which the relief claimed by him cannot at all be considered by the concerned authorities.

6. Though obvious, it is clarified that refusal by the Court to entertain this Writ Petition shall not be construed as precluding the Petitioner, if he is otherwise eligible and not disqualified, from participating in any recruitment for public appointment following the prescribed procedure.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.04.2023

kst

Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 26.02.2024.

To

1. The Secretary to Government of Tamil Nadu,
School Education Department,
Secretariat,
Chennai-09.



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2. The Director of School Education,
College Road,
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P.D. AUDIKESAVALU, J.

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