

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 24755 of 2009 (L)

PETITIONER:

**V.K.SINIMOL, AGED 26 YEARS
D/O. LATE P.R. KARUNAKARAN
VALLOSSERRIL HOUSE, KUMBALAM, KOCHI-06.**

**BY ADVS.SRI.M.POLY MATHAI
SRI.K.C.CHARLES**

RESPONDENT:

**THE RUBBER BOARD
REPRESENTED BY ITS SECRETARY
SUB JAIL ROAD, KOTTAYAM.**

**BY ADVS. SRI.JOSEPH KODIANTHARA
SRI.BINU MATHEW
SRI.TERRY V.JAMES**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 - COPY OF THE CERTIFICATE FOR THE PHYSICALLY HANDICAPPED PERSON ISSUED TO THE PETITIONER BY THE BOARD OF DIRECTORS DATED 16.09.1998.
- EXT.P2 - COPY OF THE REPRESENTATION SUBMITTED BY C.N. BABY, MOTHER OF THE PETITIONER ON 17.12.2001 TO THE CHAIRMAN, RUBBER BOARD.
- EXT.P3 - COPY OF THE LETTER DATED 05.11.2002 FROM THE RESPONDENT ADDRESSED TO THE MOTHER OF THE PETITIONER.
- EXT.P4 - COPY OF THE SAID APPLICATION FROM THE PETITIONER TO THE RESPONDENT DATED 19.09.2005.
- EXT.P5 - COPY OF THE LETTER DATED 25.07.2007 FROM THE RESPONDENT ADDRESSED TO THE PRIVATE SECRETARY TO THE PRESIDENT OF INDIA.
- EXT.P6 - COPY OF THE RESPONDENT'S REPLY DATED 31ST JULY, 2001 SUBMITTED THE NUMBER OF EMPLOYEES WHO DIED AFTER 28.07.2001 FROM THE RUBBER BOARD.
- EXT.P6A - COPY OF THE LIST OF CANDIDATES APPOINTED UNDER COMPASSIONATE GROUNDS AFTER 28.07.2001.
- EXT.P7 - COPY OF THE NOTIFICATION PUBLISHED IN THE THOZHILVEEDHI DATED 31.10.2009.
- EXT.P8 - COPY OF THE PETITIONER'S APPLICATION DATED 17.11.2009.

RESPONDENTS' EXHIBITS:-

- EXT.R1(A) - COPY OF OM NO.14014/6/94-ESTT.(D) DATED 09.10.1998 OF THE DEPARTMENT OF PERSONNEL & TRAINING, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS.
- EXT.R1(B) - COPY OF OM NO.14014/19/2002-ESTT.(D) DATED 05.05.2003 OF THE DEPARTMENT OF PERSONNEL & TRAINING, GOVERNMENT OF INDIA.
- EXT.R1(C) - COPY OF OM NO.2/8/2001-PIC DATED 16.05.2001 OF MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS, DEPARTMENT OF PERSONNEL & TRAINING.

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.24755 of 2009-L

Dated this the 1st day of October, 2015.

JUDGMENT

The petitioner is aggrieved by the fact that she had not been granted appointment under the Compassionate Appointment Scheme framed by the Rubber Board. The petitioner, admittedly, is the daughter of one P.R. Karunakaran, who died on 28.07.2001, while in the service of the respondent. The petitioner's mother, immediately on the death of the father, filed Ext.P2 application before the respondent for consideration of the appointment of the petitioner under the Compassionate Scheme. The application also emphasised the fact that the petitioner is a person, suffering from congenital disability of 75%, which is evidenced at Ext.P1 Certificate.

2. The petitioner's name was included by the respondent in the eligible applicants for such appointment. However, indigency

factor was not sufficient enough to enable the appointment of the petitioner, is the defense taken by the Rubber Board.

3. The learned counsel for the petitioner would contend that, such a ranking on the basis of indigency is not provided for in Ext.R1(a). Ext.R1(a) also does not provide for a fresh consideration on the basis of subsequent deaths occurred, is the argument. The petitioner, admittedly stood 12th in the ranklist prepared in 2002-2003. The petitioner ought to have been considered at least at the next time, as the 3rd eligible applicant being the 12th in the ranking after the 9 ranked above having been granted such appointment. The learned counsel also relies on the Full Bench decision of this Court reported in ***Bharat Sanchar Nigam Ltd. v. Rajesh [2015 (2) KLT 478]***.

4. The respondent however contends that the eligibility clause in Ext.R1(a) emphasises the indigency factor and makes relevant the expediency of requirement of assistance to be considered. Ext.R1(c) is also an Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training dated 05.05.2003, wherein there was a restriction in so far as

consideration for compassionate appointment of a particular individual, only for three years, subject only to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant.

5. The Scheme is produced as Ext.R1(a). The eligibility conditions are as follows:

"5. ELIGIBILITY

(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules."

Hence, the reigning consideration is the penurious condition and the need for immediate assistance of relief from financial destitution. This is in consonance with the principle laid down in the Full Bench decision, which finds the whole object of granting compassionate employment to enable the family to tide over the sudden crisis. It is declared following the long line of Supreme Court decisions, that the object is not to give the member of the bereaved family an appointment to a post; but to enable the family of the employee, who died-in-harness, to tide over the

financial destitution, brought about by the death of the sole bread winner.

6. The principle by which compassionate appointments are given, as has been held by this Court and the Hon'ble Supreme Court, is an exception to the guarantees of equality in public employment, which has to be strictly construed and sparingly granted in deserving cases. The Full Bench, also noticing the aforesaid principle, held that it has to be remembered that as against the destitute family of a deceased, there are million other families, which are equally or even more destitute. It was held so:

"The exception to the Rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family, engendered by the erstwhile employment which are suddenly upturned."

7. Even going by the principle as laid down in the Full Bench as also the specific eligibility conditions, it cannot be said that there can be no ranking on the basis of the indigency and appointment should be given only on the basis of the priority of applications filed. The Scheme produced at Ext.R1(a) does not

create any vested right on the employee's family to claim appointment, immediately on the death of the employee. The object in Ext.R1(a) itself is to help an employee's family therein to penury and left by the death of the employee, without any means of livelihood.

8. The appointment so made can be only up to a maximum of 5% of the vacancies falling under the direct recruitment quota in any Group C or D posts as per Clause 7(b) of Ext.R1(a) Scheme. The consideration of the applications for appointments on compassionate grounds also has to be in the light of the instructions issued from time to time by the Department of Personnel and Training (Establishment Division) on the subject, as per Clause 12(b). The essential spirit of such appointments and the manner in which it is to be considered has been stated in Clause 16(c), which is extracted hereunder:

"While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of

the family, ages of the children and the essential needs of the family, etc.”

9. With respect to actual implementation, the Counter Affidavit has to be referred to, on the question of how the applications for compassionate appointments were processed and considered in the respondent Board. In the year 2002-2003, immediately after the death of the petitioner's father, there were 9 vacancies available for compassionate appointment. Against which, 12 applications were considered. The petitioner was ranked 12th in the list prepared in accordance with the financial condition of the respective families. The petitioner's mother, admittedly, was employed in the Port Trust. The respondent Board, based on the verification reports of the pecuniary condition of each individual family, granted the appointment to 9 persons ranked in the list, whose financial situation was worse than that of the petitioner and who were in need of immediate assistance. The petitioner could not be appointed, since there were only 9 vacancies available for such compassionate appointment. The petitioner also does not challenge any such appointments.

10. Later, there was a restriction imposed on direct recruitment in civilian posts, which is produced as Ext.R1(c), being a communication of the Department of Personnel & Training of the Government of India and hence no compassionate appointments were made during the said period. During 2006-2007, there were again 10 vacancies available for compassionate appointment and there were 26 applications pending. The contention of the petitioner is that she should have been ranked third and offered an employment in the respondent Board. However that would be totally ignoring the financial condition of those families, who suffered bereavement later to that of the petitioner. If the petitioner's contention is to be accepted the only relevant factor to make such appointments was to be stipulated as the date of death of the employee. That is not the spirit or the object with which the Scheme is framed. The overwhelming consideration is the pecuniary condition of the bereaved family and the expediency with which relief is to be provided.

11. Again, the verification was made by the respondent Board and 14 candidates were found eligible. It is stated in the Counter Affidavit that, at that point of time, there were 26

applicants for compassionate appointment. So, obviously, out of the 26 applicants, only 14 were found eligible to be appointed on the basis of their pecuniary condition. 10 candidates were said to have been offered appointment and one of such persons having declined the offer, one another among the eligible candidates was offered the employment. In the year 2008-2009, only one vacancy was available and 15 applicants were found eligible, with the petitioner again having been found ineligible for such compassionate appointment.

12. The petitioner having been considered thrice was excluded from consideration thereafter, as is mandated in Ext.R1 (b). Ext.R1(b) cannot be said to be applicable to applications filed prior to its coming into force, is the contention. The scheme itself, as was noticed above, has to be implemented in the light of the instructions issued from time to time, by the Department of Personnel & Training, which Department had issued Ext.R1(b). The same can only be considered to be a clarification issued as has been found by the Full Bench also. In fact, it is to be noticed that the very same Scheme was under consideration of the Full Bench and this Court is of the opinion that considering the dictum

laid down by the Full Bench, the petitioner cannot have a claim, not can it be said that on consideration of such claim, the petitioner has been arbitrarily excluded. The terms of the Scheme have been looked into and it can only said to be an unfortunate circumstance, that the petitioner could not be accommodated for reason of there being more eligible candidates, with a more precarious condition and financial need than the petitioner.

13. Going by the principles laid down by the Full Bench of this Court, the appointment has to be necessarily from families, which suffer an indigency for reason of the death of the sole bread winner. The indigency factor is the relevant consideration for effecting such appointments. The petitioner's mother, at the time of the death of her father, was employed in the Port Trust. The petitioner, though was included in the list of eligible candidates in the year 2002-2003, could not be given an appointment, since there were other candidates more eligible for appointment, whose financial condition was more precarious than that of the petitioner. The petitioner had also been considered twice later, but found ineligible on an assessment of the pecuniary condition of the applicants then existing. The eligibility

for compassionate appointment being on a consideration of the indigency factor and the need for immediate assistance for relief, this court cannot find any illegality in the petitioner having not been appointed under the Compassionate Scheme. This Court is unable to sustain the claim of the petitioner.

The writ petition hence would stand dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

sp/06/10/15

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P.A. to Judge.