

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.908 of 2015

M.Vimala

... Appellant/Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

2. The Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort St. George,
Chennai-600 009.

... Respondents/Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 26.04.2011 made in W.P.No.3318 of 2011.

Writ of Mandamus, to direct the first respondent give compassionate ground appointment in favour of the petitioner.

For Appellant : Ms.N.Beulah John Selvaraj

For Respondents : Mr.R.Arunmozhi for R-1
Mr.P.S.Sivashanmugasundaram,
Spl.G.P for R-2

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JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant appeal arises from the order dated 26.04.2011 passed in W.P.No.3318 of 2011.

2. The petitioner /appellant is stated to be the daughter of one Mr.Mahalingam, who, while working as a driver of the garbage lorry in the first respondent Corporation, died in harness on 6.12.1987. It is stated that her mother predeceased her father on 5.3.1986. She was brought up by her paternal uncle. At the time of the death of the petitioner's father, the petitioner was three years old. The petitioner made an application for compassionate appointment on 01.10.2001 stating that the condition of the petitioner was pitiable and deserves sympathetic consideration for compassionate appointment. The second application was made six years after she attained majority. The learned Single Judge, relying on the decision of the Supreme Court in Local Administration Department and another Vs. M.Selvanayagam @ Kumaravelu¹, dismissed the writ petition.

3. Heard the learned counsel appearing for the parties. The compassionate appointment is not an appointment in accordance with the constitutional scheme of employment. Consideration of the application in violation of the provisions of Article 14 and 16 of the Constitution of India cannot be held as legal way of appointment. However, it is well settled proposition of law that to provide succor and immediate relief to the dependent family, who had fallen in penury and suffering on account of untimely death of the Government employee in harness, the Government is held as competent to frame a proper policy to consider the applications of dependent family members of the deceased employee for appointment on compassionate basis. However, in absence of the same, no appointment on compassionate basis may be held as proper and valid.

4. In Umesh Kumar Nagpal Vs. State of Haryana and others², the Supreme Court had observed as under :

"2.....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 a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of

¹ Civil Appeal No.2206 of 2006 dated 05.04.2011.

² (1994) 4 SCC 138.

livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family....."

It was further held as under :

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

5. The aforesaid proposition of law was referred to with approval in the subsequent decisions of the Supreme Court, i.e., Jagdish Prasad v. State of Bihar³, Haryana SEB v. Hakim Singh⁴, State of U.P v. Paras Nath⁵, Director of Education (Secondary) v. Pushpendra Kumar⁶, State of J&K v. Sajad Ahmed Mir⁷, Bhawani Prasad Sonkar v. Union of India¹, and CCE & Customs v. Prabhat Singh⁸.

6. Recently, in MGB Gramin Bank v. Chakrawarti Singh⁹, it was held as under:

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadwinner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family

3 (1996) 1 SCC 301.

4 (1997) 8 SCC 85.

5 (1998) 2 SCC 412.

6 (1998) 5 SCC 192.

7 (2006) 5 SCC 766.

1 (2011) 4 SCC 209.

8 (2012) 13 SCC 412.

9 (2014) 13 SCC 583.

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of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

Thus, the law is well settled that the appointment on compassionate ground is to tide over the penurious condition of the dependent family members of the deceased employee dying in harness, in accordance with the policy.

7. Keeping in view the well settled principles of law in case of appointment on compassionate basis, it is manifest that the purpose of grant of compassionate employment is to tide over sudden crisis, which has befallen the members of deceased employee. The sudden crisis comes immediately on the death of the employee in harness and that crisis does not continue for years and as such, the condition of sudden crises cannot be held as available even after a period of 20 years as in the case on hand, the application was made after a period of 20 years.

8. As a sequel, directing the respondents to consider the case of the petitioner / appellant for compassionate appointment will go against the constitutional scheme, as other similarly placed persons, who do not have the benefit of having the parents employed in the government service, may be deprived if they are not granted an opportunity to compete with other similarly situated persons.

9. Resultantly, there is no merit in the appeal. Accordingly, it is dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar

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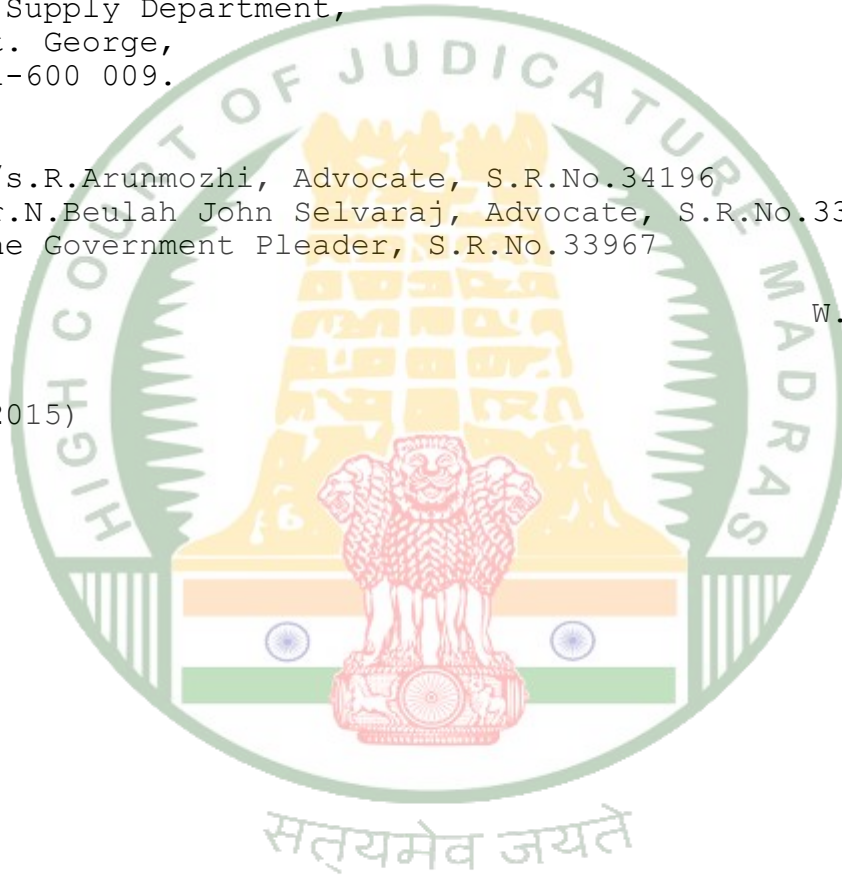
To

1. The Commissioner,
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Rippon Buildings,
Chennai-600 003.
2. The Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort St. George,
Chennai-600 009.

+1cc to M/s.R.Arunmozhi, Advocate, S.R.No.34196
+1cc to Mr.N.Beulah John Selvaraj, Advocate, S.R.No.33873
+1cc to the Government Pleader, S.R.No.33967

W.A.No.908 of 2015

RV (CO)
CA(22/07/2015)



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