

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.3507 OF 2004

ORDER:

This writ petition is filed seeking Writ of Mandamus declaring the proceedings of the 2nd respondent in ROC No.TLI/22019/98, dated 01.01.2004 rejecting the petitioner's claim for appointment on compassionate grounds as illegal, arbitrary and without jurisdiction and consequently direct the respondents to consider and appoint the petitioner on compassionate grounds.

2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

3. The case of the petitioner is that his father Nallappa died in harness on 19.04.1998 leaving behind the petitioner and his other brothers in his family. The petitioner filed an application seeking appointment on compassionate grounds, but the respondents through proceedings dated 06.11.2001 rejected his claim stating that he is the son of divorced wife of the deceased employee. The petitioner filed W.P.No.3934/2002 and this Court set aside the order of the 2nd respondent dated 06.11.2001 and directed the respondents to consider the case of the petitioner. Again, the 2nd respondent did not consider his case and passed the impugned order dated 01.01.2004 rejecting the case of the petitioner on the ground that the mother of the petitioner though got an *ex parte* divorce from her deceased husband is an employee of TTD working as Sweeper and the 1st elder brother of the petitioner is also an employee of TTD working as Mazdoor and the remaining 2nd elder brother of the petitioner is also earning member as Taxi Driver and attending house wiring works privately and hence the family of the deceased employee is not in distress condition and there is no need to provide employment assistance on compassionate grounds to the petitioner, who is 4th son of the

deceased employee. Questioning the said proceedings, the petitioner filed the present writ petition contending that the right conferred under G.O.Ms.No.687 dated 03.10.1977 to the members of the deceased employee cannot be defeated by taking into consideration the irrelevant factors.

4. The respondents filed counter stating that A.Nallappa, Ghat Road Gang Cooly, TTD expired while in service on 19.04.1998. The petitioner seeks employment assistance in TTD on compassionate grounds stating that he is the dependent on his father and there are no earning members in the family. It is further submitted that as per the records, the mother of the petitioner A.Kaveramma obtained *ex parte* divorce decree from her husband on 29.01.1998 and she has been working as Sweeper in TTD and she continued to be the mother of the petitioner. Therefore, the request of the petitioner was rejected earlier vide proceedings dated 06.11.2001. The petitioner filed W.P.No.3934/2002 and this Court vide orders dated 13.11.2003 directed the respondents to consider the claim of the petitioner by examining his plea that he was separately living along with his father and there is no other earning member in the separated family. As per service records, both the deceased employee and his divorced wife recorded the name of the petitioner along with other three sons and one daughter. As per Vigilance Enquiry the divorced wife of deceased employee, A.Kaveramma is living lonely at Tirumala and her four sons are not living with her, further, all the 3 elders brothers of the petitioner are earning members in the family except the petitioner. Appointment on compassionate grounds to one of the dependent in the deceased family has to be considered only if there is no breadwinner in the family and the family is really in distress condition. It is found that the family of the deceased employee is not in distress condition and there is no need to provide employment assistance on compassionate grounds to the petitioner, who is 4th son of the deceased employee. As per succession certificate, there are 7 family members of the

deceased employee, including the petitioner, and all of them had taken the death benefits and hence the claim of the petitioner that he belongs to the family of his father and the other earning members of the family belong to his mother family is not sustainable, therefore, it is contended that the petitioner is not eligible for providing employment assistance on compassionate grounds in terms of G.O.Ms.No.687, dated 03.10.1977.

5. The point for consideration is whether the petitioner is entitled to be considered for employment in TTD on compassionate grounds?

Point:

6. As noticed from the preceding averments, the admitted fact is that Nallappa was working as (Ghat Road) Gang Coolie with TTD and he died in harness on 19-04-1998. His wife Kaveramma was also working as a sweeper in the respondent/TTD. Three months prior to the death of Nallappa, Kaveramma obtained an *ex parte* decree of divorce against him on 29-01-1998. After the death of Nallappa, the writ petitioner filed an application to appoint him with the respondent/TTD on compassionate grounds. The admitted fact is that Nallappa and Kaveramma had four sons and one daughter namely Maha Lingam, Murugeshan, Sreenivasulu, Haribabu and Dhanalaxmi. Maha Lingam was already working as a Mazdoor in TTD. Murugeshan and Sreenivasulu were doing odd jobs as Taxi Driver and House wiring works. The petitioner – Hari Babu therefore sought for appointment on compassionate grounds. The said request was rejected on the ground that already the wife of the deceased and the son of the deceased are in the employment of the TTD.

7. The contention of the writ petitioner is that rejecting the request of the petitioner for appointment on compassionate grounds was not justified for the reason that even by the date of death of Nallappa, his wife was separated and was living with other sons whereas the writ petitioner was living with the deceased Nallappa.

Since this branch of the family had no sources of income, the respondent ought to have appointed him on compassionate grounds.

8. The contention of the respondent/TTD is that as per the scheme of appointment on compassionate grounds, no person can claim the said appointment as a matter of right and that depending upon facts and circumstances of each case and the family background and the sources of income of the family, the request of the dependent of a deceased employee will be considered. In support of this contention, learned Counsel appearing for the respondent/TTD referred to G.O.Ms.No.687, General Administration (Services-A) Department, dated 03-10-1977 which clearly stipulates that the candidate is eligible for appointment under this measure shall be the spouse of the deceased Government servant or the dependent children of the deceased Government servant who died in harness, there being no other earning member in the family. Reliance is also placed upon the decision of the Supreme Court reported in **UMESH KUMAR NAGPAL v. STATE OF HARYANA**^[1] wherein the Supreme Court held as under:-

“The whole object of granting compassionate employment is 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 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.

Offering compassionate employment as a matter of

course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible.”

9. Reliance is also placed upon another decision of the Supreme Court reported in **UNION OF INDIA v. SHASHANK GOSWAMI**^[2] wherein the Supreme Court observed in paras 9 and 10 as under:

“There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and died while in service. Appointment on compassionate grounds cannot be claimed as a matter of right.

As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate grounds is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, the applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate grounds have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

10. Learned Counsel appearing for the respondent/TTD has also produced the Family Members Certificate issued by the Tahasildar stating that the deceased left behind wife, three sons and

one daughter and they were all resident of Door No.24, New 'D' Type, Tirumala. The certificate issued by the Revenue Divisional Officer, Tirupati, dated 26-08-2009, certifying the financial status of the family is also produced.

11. In view of the above, there is no substance in the submission of the writ petitioner that by the time the deceased Nallappa died, the writ petitioner was dependent upon him and that the family had no other earning member.

12. During pendency of the Writ Petition, Kaveramma, the wife of the deceased, took retirement from the service on the grounds of medical invalidation. As per the scheme in force with regard to appointment of a dependent of an employee who takes retirement on the grounds of medical invalidation, the TTD has appointed A.Sreenivasulu, the brother of the writ petitioner as Engineering Mazdoor on compassionate grounds in proceedings Roc.No.TL1/10975/2010, dated 31-07-2010. This appointment of the brother of the writ petitioner was made only after all the sons and daughter of Nallappa and Kaveramma gave a notarized affidavit stating that they have no objection for the appointment being provided to Sreenivasulu on compassionate grounds.

13. In view of the foregoing discussion, what is evident is that the writ petitioner is not entitled to be considered for appointment in TTD on compassionate grounds in view of the death of Nallappa. The TTD has rejected the said request for valid grounds keeping in view of the fact that wife and son of the deceased employee were already working in TTD and after Kaveramma, another brother of the writ petitioner was appointed in TTD. There are no merits in the writ petition and the same is liable to be dismissed.

14. In the result, the writ petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

14th December, 2015
Dsr/smr

[\[1\]](#) (1994) 4 SCC 138

[\[2\]](#) (2012) 11 SCC 307