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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.09.2016
CORAM
THE HONOURABLE DR.JUSTICE S.VIMALA
W.P(MD)No.11703 of 2013
and
M.P(MD)No.1 of 2013

R.Kumaran ... Petitioner

vs.

1)The Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation (NSSO)
Field Operation Division,
Room No.412, 4th Floor,
S.P. Bawan, New Delhi-110 011.

2)The Deputy Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation (NSSO)
Field Operation Division,
East Block, 6, R.K.Puram,
New Delhi-110 066.

3)The Deputy Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation (NSSO) (FOD),
Regional Office, T.N. (West),
No.13, Senkupta Street,
Ramnagar, Coimbatore-641 009.
4)The Assistant Director,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation (NSSO) (FOD)
1st Main Road,
Ramalinga Nagar, Woriur,
Trichirappalli-620 003. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to provide a job to the petitioner under compassionate ground for the service rendered by his father M.Raju as Superintendent Grade-I Officer before the respondent's office.

For Petitioner : Mr.N.R.Murugesan
For Respondents : No appearance

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ORDER

This Writ of Mandamus has been filed to direct the respondents to provide a job to the petitioner under compassionate ground considering the past service rendered by his father M.Raju as Superintendent Grade-I Officer in the respondent's office.

2.The petitioner's father died on 31.10.2009; the petitioner was qualified to claim appointment on compassionate grounds as a Graduate in B.E Computer Science and Engineering; the other members in the petitioner's family has expressed no objection for the petitioner to obtain compassionate appointment; the petitioner submitted his representation seeking compassionate appointment on 21.12.2009; thereafter, a reminder was sent on 08.01.2010; the 2nd respondent passed an order on 20.06.2013, rejecting the claim for compassionate appointment on various grounds; one of the reasons mentioned by the 2nd respondent for rejection was that the petitioner obtained only 29 marks out of 100 and in view of his position vis-a-vis the parameters assessed namely, family pension, terminal benefits, financial condition including monthly income of earning members movable/immovable property, number and age of dependant.

3.According to the learned counsel for the petitioner, the grant of family pension or payment of terminal benefits cannot be treated as substitute for providing employment assistance on compassionate grounds and in support of the same, he has relied upon a decision of the Hon'ble Supreme Court in *Canara Bank vs. Mahesh Kumar*, reported in *(2015) 7 SCC 412*. At this juncture, it is relevant to extract paragraphs 10, 11 and 19 of the said decision:-

> "The object of the Scheme is to help dependants of employees of Canara Bank who die or become totally and permanently disabled while in harness and to overcome the immediate financial difficulties on account of sudden stoppage of the main source of income. The employment under the scheme will be considered only if there are indigent circumstances necessitating employment to one of the dependants and the deceased employee's service record is unblemished". In para 3.2, it is stated that in case of the dependant of the deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration.
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> 11.During the pendency of the matter before the Division Bench, Indian Banks Association (for short 'IBA') formulated a scheme based on the guidelines issued

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by the Government of India. As per the said Scheme, the banks have scrapped the scheme of compassionate appointment and introduced the new scheme of ex-gratia payment in lieu of compassionate appointment by H.O. Circular No.35/2005 dated 14.02.2005. According to appellant-Bank, as on date of consideration of the application for compassionate appointment, there was no policy to provide compassionate appointment under 'Dying in Harness Scheme'. It is therefore the contention of the bank that the new scheme of 2005 applies to all pending applications for appointment on compassionate ground, respondent's case could not be considered and as per the new Scheme, they are only entitled to ex-gratia payment in lieu of compassionate appointment.

19.Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.''

4.The learned counsel has also relied on a decision of this Court in Union of India vs. Registrar, CAT, reported in (2013) 6 MLJ 617 and contended that when there has not been an objective consideration or arbitrary approach in considering the application, the Court is not denuded of jurisdiction from extending its arms under Article 226 of the Constitution of India. It is relevant to extract paragraph of 7 of the said decision:-

''7. This Court is conscious of the legal position that there is no vested right to secure appointment on compassionate grounds. Yet, when the Court finds that there has not been an objective consideration or arbitrary approach, this Court is not denude of jurisdiction from extending its arms under Article 226 of Constitution. In the case on hand, there is no dispute that the second respondent was eligible for being considered for appointment on compassionate grounds, the application filed by her was well within a time, she was otherwise found eligible to secure employment. Therefore, to deny employment to the second respondent on speculation that what might occur in future is unreasonable. Medical experts state that blood glucose levels fluctuate throughout the day, which is also the

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case of people without diabetes, and one test result cannot be an assessment of the overall health of a person with diabetes.''

5.The original order of rejection was passed by the 2nd respondent on 21.03.2011, returning the application of the petitioner seeking compassionate appointment, stating that there is no provision for compassionate appointment in respect of any post in Group B cadre. Thereafter, the petitioner has again submitted an application dated 02.05.2011 to the 2nd respondent, agreeing to take up any job. Even now, it is submitted by the learned counsel for the petitioner that the petitioner is ready to take up any job in the cadre of Group C or D.

6.Recording the said submission made by the learned counsel for the petitioner, the respondents are directed to provide job to the petitioner under compassionate grounds in respect of any post subject to his eligibility and suitability, within a period of six weeks from the date of receipt of a copy of this order.

Accordingly, this Writ Petition is disposed of. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

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+One cc to Mr.N.R.Murugesan, Advocate, SR.No.56859

nbi
RL/6C/5P/SK/SKN/19.10.2016

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