

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2017

Coram

The Hon'ble Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.13792 of 2016

A.Esaiamuthu

...Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government
Adi Dravidar & Tribal Welfare Department
Secretariat, Fort St.George
Chennai - 600 009.
2. The Director of Adi Dravidar Welfare
Chepauk
Chennai - 600 005.
3. The District Adi Dravidar & Tribal Welfare Officer
Cuddalore District
Cuddalore.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the 2nd respondent to consider the Appeal Petition submitted by the petitioner dated 15/05/2014 and to pass appropriate orders for appointment of the petitioner in any teaching and non teaching post on compassionate grounds.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

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O R D E R

The relief sought for in this writ petition is for a direction to direct the second respondent to consider the appeal petition submitted by the petitioner on 15.05.2014 and pass appropriate orders for appointment of the petitioner in any teaching and non-teaching post on compassionate grounds.

2. The learned counsel appearing for the writ petitioner states that the father of the writ petitioner Late.R.Azhagusundaram was working as Headmaster in Adi Dravidar Welfare Primary School, Kodikalam, Thittakudi Taluk, Cuddalore, and passed away on 16.06.2001, while he was in service. The brother of the writ petitioner, one A.Ramadoss had initially submitted an application seeking compassionate appointment on 07.09.2001, by enclosing necessary documents and the respondents have not considered the claim of the brother of the writ petitioner and the application was pending for more than seven years. The writ petitioner claims that his brother - A.Ramadoss, was also not well and being a qualified candidate, possessing the qualification of M.Com., B.Ed., the writ petitioner submitted an application seeking compassionate appointment on 09.03.2011 and the respondents have not considered the application so far.

3. The fact remains that the father of the writ petitioner died on 16.06.2001 and the first application seeking compassionate appointment was filed by the brother of the writ petitioner on 07.09.2001 and the writ petitioner once again submitted an application seeking compassionate appointment on 09.03.2011. There is no scheme to entertain the application submitted second time by the writ petitioner.

4. Compassionate appointment being a scheme, cannot be utilized for the purpose of securing an employment by submitting application by number of legal heirs of the deceased employee. If an application is submitted originally by the brother of the writ petitioner, the brother of the writ petitioner ought to have redressed his remedy, in the manner known to law.

5. Further more, the lapse of time provides a legal presumption that the indigent circumstances arose on account of sudden demise of the deceased employee vanishes. The legal principles regarding the scheme of compassionate appointment are

enumerated in the Division Bench judgment rendered by this Court in the case of R.Visoliya vs. State of Tamil Nadu in WP No.186 of 2015 decided on 2.3.2017, paragraph-6 of the judgment is relevant, which is extracted as under:-

"6. Similarly, even if an application is made seeking employment in favour of one particular member of the family, before any such appointment is made, the application can be allowed to be substituted with that of any other family member as well. It is for the family of the deceased Government servant to choose and a rigid approach not to allow any substitution to take place is not an appropriate measure of providing succour and help to the family of the deceased Government servant, which is the very objective and rationale behind the scheme. There can be imponderable factors as to why an earlier application may not be pursued. Hence we are of the opinion that the rejection of the proposal by the State Government to regularise the service of the writ petitioner only on the ground that the earlier application is not pursued but substitute application is considered, may not be most appropriate and is also not justified. If the application submitted by one of the family members has already resulted in an order of appointment in favour of such an applicant, at that stage, perhaps substitution may not be warranted or entertained but like in the instant case, where the application made by one member of the family seeking appointment on compassionate basis is still pending consideration, any such subsequent application in place of the former one duly obtained with the consent of the earlier/former applicant is liable to be treated as one of substitution but not be treated as a subsequent application or a fresh application or a case of the family making multiple applications."

6. In MGB Gramin Bank vs. Chakrawarti Singh {(2014) 13 SCC 583}, the Hon'ble Supreme Court, in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of its judgment, 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 bread-earner. 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 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.

7. In Umesh Kumar Nagpal v State of Haryana & Ors., (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court 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.... 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.

4. ... The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

* * * * *

6. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis....." (Emphasis added)

8. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

10. In *A. Umarani v Registrar, Co-operative Societies & Ors.*, AIR 2004 SC 4504, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or

ordered to be given in violation of the scheme would be illegal.

11. The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as:

"vested.----fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute "vested rights".

12. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Bibi Sayeeda v State of Bihar AIR 1996 SC 516; and J.S. Yadav v State of Uttar Pradesh (2011) 6 SCC 570)

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldip Singh v Government, NCT Delhi AIR 2006 SC 2652).

14. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India & Anr. vs. Raj Kumar (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending

applications.--The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

7. In view of the legal principles settled in this regard no further consideration is required to be undertaken on the facts of this case and accordingly the writ petition stands dismissed. However no order as to costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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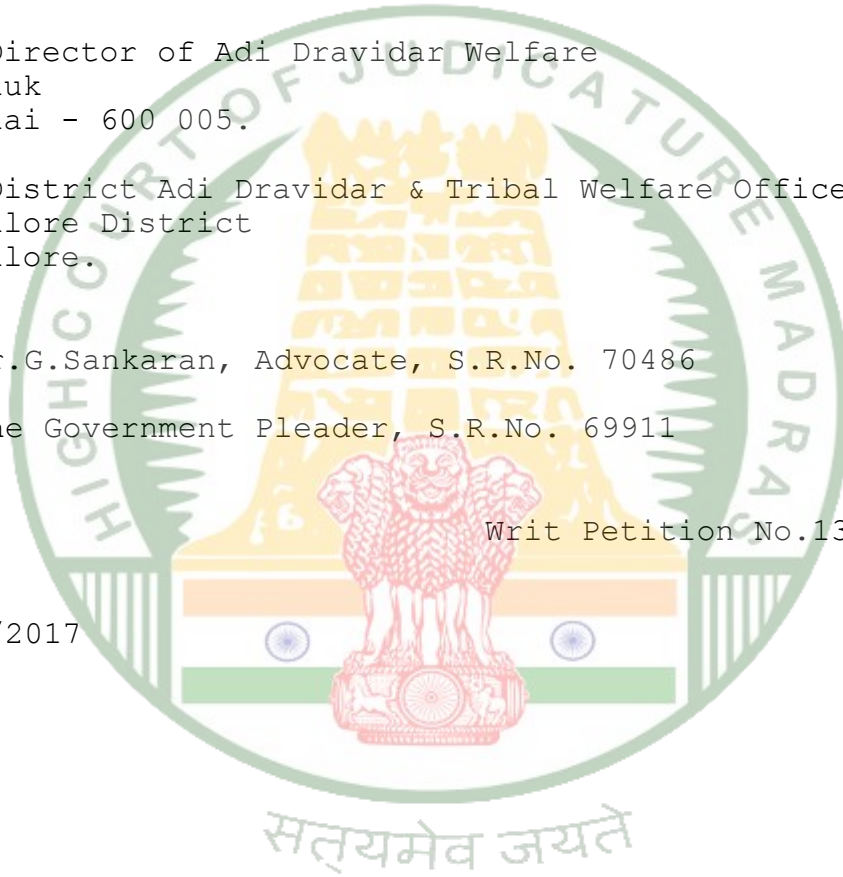
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+1cc to Mr.G.Sankaran, Advocate, S.R.No. 70486

+1cc to the Government Pleader, S.R.No. 69911

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SJ (CO)
PSI 28/10/2017



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