

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-09-2017

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P. No.44684 of 2016

And

W.M.P. No.38527 of 2016

A.Selvam

.... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary,
Rural Development Department,
Fort St. George,
Chennai-600 009.

2.The Director,
Rural Development and Panchayat Raj
Department,
Chepauk,
Chennai-600 005.

3.The District Collector,
Ariyalur and District.

4.The Commissioner,
Panchayat Union,
Ta.Pazhur,
Udayarpalayam Taluk,
Ariyalur District.

.... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent passed in his proceedings Na.Ka.No.2437/2011/

Panchayat Union-2 dated 23.9.2013 and quash the same and direct the respondents to give appointment to the petitioner on compassionate ground based on his application submitted before the fourth respondent dated 28.8.2003 followed by reminder dated 25.12.2005 and 25.3.2013 due to the demise of his father Mr.V.Anandan who died on 25.8.2002 while in service.

For Petitioner : Mr.V.Krishnamurthy

For Respondents : Mr.R.S.Selvam,
Government Advocate.

ORDER

The relief sought for in this writ petition is to quash the order of rejection dated 23.9.2013 in relation to the claim of compassionate appointment made by the writ petitioner.

2. The father of the writ petitioner was working as Road Worker in Ta.Pazhur Panchayat Union and died on 25.8.2002 while he was in service.

3. The learned counsel appearing for the writ petitioner made a submission that an application, seeking compassionate appointment was filed on 29.1.2003 by the writ petitioner and the

same was rejected after a lapse of 10 years on 23.9.2013.

4. The learned counsel, appearing on behalf of the fourth respondent, made a submission that the father of the writ petitioner was a Gang Coolie in Ta. Pazhur Panchayat Union and died on 25.8.2002. The elder brother of the petitioner Mr.Soundarajan and the petitioner herein, are the legal heirs of the deceased Government Servant. However, the petitioner as well as his elder brother were claiming a compassionate appointment on account of the demise of their father. The elder brother of the writ petitioner did not possess the required qualification for compassionate appointment, however, the writ petitioner is qualified, since no objection was obtained from the elder brother and the dispute was continuing between the brothers, the order of rejection was passed.

5. The learned counsel appearing for the writ petitioner made a submission that subsequently, No Objection Certificate was produced. This fact cannot be now considered in view of the fact that already 15 years have lapsed from the date of death of the deceased employee and the question of providing compassionate appointment based on the indigent circumstances will not arise at all. The Scheme

of compassionate appointment is to mitigate the indigent circumstances, arising on account of the sudden demise of a Government employee and the benefit of the Scheme cannot be extended after a lapse of 15 years from the date of death of the deceased employee and the legal presumption would be that the indigent circumstances arose at the time of death of the employee vanished.

6. In this view of the matter, this Court has to examine the scope of the scheme. The scheme being an exception, the authorities competent has to implement it in its strict terms. Equal opportunity in a public employment is a constitutional mandate.

7. All the recruitment process under the rules are made by the Competent Authorities by implementing the rules of reservation under the Constitution of India. This apart the regular competitive process has got a method of screening the candidates on merits even for the reserved categories. These two aspects are vital in regular recruitment process:

- First is adherence of the Rules of Reservation under the Constitution of India;

- Second is the comparative merit amongst the candidates who are participating in the regular competitive process.

8. In case of compassionate appointments, no such constitutional mandated requirements have been followed. Thus, very scheme itself is an exception and not in accord with the constitutional scheme. Compassionate appointment scheme as a special one necessarily to be restricted to the extent possible, so as to provide appointment only to the genuine and warranting families. This apart, the over all strength of the compassionate appointees should not exceed more than the restricted level and if such a kind of special appointments are increased in the public posts, this Court is of the view that the efficiency level in the public administration will certainly be affected.

9. In respect of the Rules of Reservation, the same has not been followed in compassionate appointment. Thus large number of compassionate appointments will have certain implication on the Rules of Reservation and the same will certainly have an impact on the Constitution of India, more specifically, on the principles of reservation. In respect of the merit aspect, no competitive examination or interview

are conducted for compassionate appointees. Thus the very capability of the candidates in performing the administrative duties itself will be in question. Certain amount of merit assessment is certainly required for appointing a candidate in any public posts.

10. Thus, the concept of compassionate appointment itself is to be reconsidered by the Government and it should be restricted so as to provide appointment only to the legal heirs of the deceased in genuine circumstances. Otherwise, the scheme of compassionate appointment will have a negative impacts on the good governance and further, it will affect the chances of the meritorious candidates, who can participate in the public administration in the better manner.

11. Rules of Reservation being a constitutional mandate any scheme violating the same has to be implemented cautiously and restrictedly. Thus, genuineness of the claim made by the person on compassionate grounds to be strictly in accordance with the terms and conditions and further, the State cannot be going on extending the scope of compassionate appointment so as to dilute the principles of reservation under the Constitution.

12. Such being the scope of the scheme, the Courts are also to be cautious while extending the benefit of compassionate appointment in favour of the legal heirs of the deceased employee and the legal presumption in this regard is that the indigent circumstances certainly vanishes after a lapse of long years.

13. In **Sanjay Kumar vs. State of Bihar and Others {(2000) 7 SCC 192}**, wherein the Hon'ble Supreme Court, in paragraph-3 of its judgment, held as under:-

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education and another v. Pushpendra Kumar and others (supra). It is also significant to notice that on the date when the first application was made by the

petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

14. In **Umesh Kumar Nagpal vs. State of Haryana and Others {(1994) 4 SCC 138}**, the Hon'ble Supreme Court, in paragraph 6 of its judgment, 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 bread-winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

15. In **State of Manipur vs. Md. Rajaodin {(2003) 7 SCC 511}**, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in Phoolwati (Smt.) vs. Union of India and others (1991) Supp. (2) SCC 689 and Union of India and others vs. Bhagwan Singh (1995 (6) SCC 476). In Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others (1998 (5)

SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and there nullity the main provision by taking away completely the right conferred by the main provision."

16. In **Steel Authority of India Limited vs.**

Madhusudan Das and Others {(2008) 15 SCC 560}, wherein the Hon'ble Supreme Court, in paragraph 15 of its judgment, held as under:-

"This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. [See General Manager, State Bank of India and Others vs. Anju Jain (2008) 8 SCC 475, para 33]"

17. 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."

18. This Court in a judgment in **W.P.No. 8773 of 2015**

decided on 27.07.2017 held as follows:-

"11. India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavour for promoting the welfare of

the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment opportunities to the members of the family of the deceased Government servants has arisen.

12. A Government servant is expected to give his full time attention and energy and render his very best of attention for securing faithful implementation of various schemes and welfare measures brought in place by the State Government, he is termed as a round the clock servant of the State and he should devote and dedicate himself for providing good quality services to the citizens. Should, unfortunately, any such employee die in harness, his family members cannot be left behind in distressful conditions, unattended to and uncared for. With the sudden departure of a breadwinner, we should be alive to the fact that most of the Indian families lose the very source of their sustenance. It is not at all difficult for us to imagine that inspite of rapid strides of progress, the

country has been making in all Sectors, still there are several lakhs of families having a single breadwinner and on an average 4 or 5 hungry persons depend on him for their sustenance and survival. In such a scenario, if that breadwinner vanishes suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. The savings made by the public servant would be hardly enough to see them through the next six months, at best. During the best days of a man, he might have contributed meaningfully, given the fact that whatever marginally that would make a difference, to the States 'Service and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them, by those servants including the deceased employee'.

13. Apart from the civil servant enjoying the status as such, upon his death, if his family members who are surviving are not to be taken care of by the State, the prospects are such that a negative image can be spread in the Society that the State never bothers for the well-being of the dependents of the Government servants. It is to avoid any such negative image gaining ground, the State Government as a socio welfare measure, has put in place a mechanism for providing employment

to one of the eligible dependents of the family of the deceased Government servant. Several meaningful conditions are attached to be complied with before hand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be thrown open to competition for one and all. All members who are eligible to be so recruited should be permitted to compete and the best amongst them found suitable can alone get employment. Therefore, an exception is sought to be carved out from this constitutionally assured mechanism of filling up public employment while providing for making appointments on compassionate grounds. Possibly, conditions can be stipulated such as that at the time of death, the left over service of the deceased employee before he attains the age of superannuation should not be less than a reasonable period, say three years or at best five years. Similarly, a stipulation that appointment on compassionate grounds should be claimed as quickly as possible after the death of the civil servant, a duration in this regard can be prescribed not to exceed by a reasonable length of time of say three years or at best five years. If the surviving members of the civil servant who died, can get along and carry on their show for considerable length of time after the departure of the breadwinner, by far, in a reasonable manner, interference can be drawn

from that the family of the deceased civil servant is able to feed for itself, notwithstanding the loss of the breadwinner. The period of endurance of such a family holds out an assurance that the family has got over the trauma caused by the departure of the breadwinner, and it has the necessary social resources to carry on with the show in his absence as well.

14. In these set of circumstances, the State Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

15. When we keep these factors in mind and also in view of the fact that making appointments on compassionate grounds is not one of the identified/marked sources of recruitment to civil service--rather it is an exception to the normal constitutional norm of allowing all people to contest and compete--appointments on compassionate grounds cannot be made after long years have gone by, from the date of the death of the civil servant.

16. It may be a different matter if the

employee concerned died in service while trying to protect the property of the Court/State Government as the case may be and while trying to save it from any accidental hazards such as fire, flooding, etc., or while trying to save the record or property of the Court/Government from the hands of miscreants who are trying to destroy the same, as those cases, require greater amount of compassion to be shown as the individual concerned has made the highest sacrifice of his own life, for the cause of the State. In such cases, perhaps a longer duration of even ten or fifteen years can be considered as reasonable. Those, who lay down their lives while trying to save/protect the interest of the State Government/Court, stand on a lofty pedestal in comparison to those who met with either natural or self inflicted unnatural death. In no case, the time limit prescribed for entertaining the claims for compassionate appointment should be kept open like in the instant case for more than two decades. Any attempt to entertain any such claim, would convert the scheme of making compassionate appointments into a different form of hereditary employment. It would also tend to convert the scheme of compassionate appointments into a source of recruitment altogether and both the aforementioned factors are not the pursuits, which should be allowed to be undertaken or encouraged

by the State Government and its organs.”

19. Taking into consideration all the aspects, the grounds raised in the writ petition need no further consideration and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

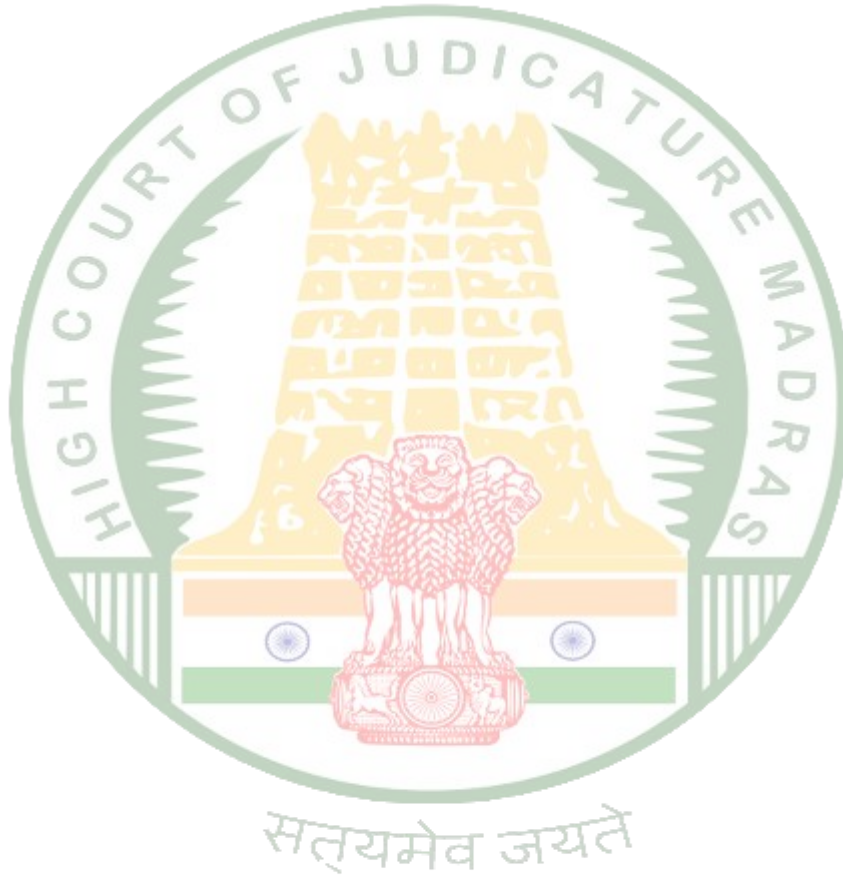
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Speaking /Non-speaking order

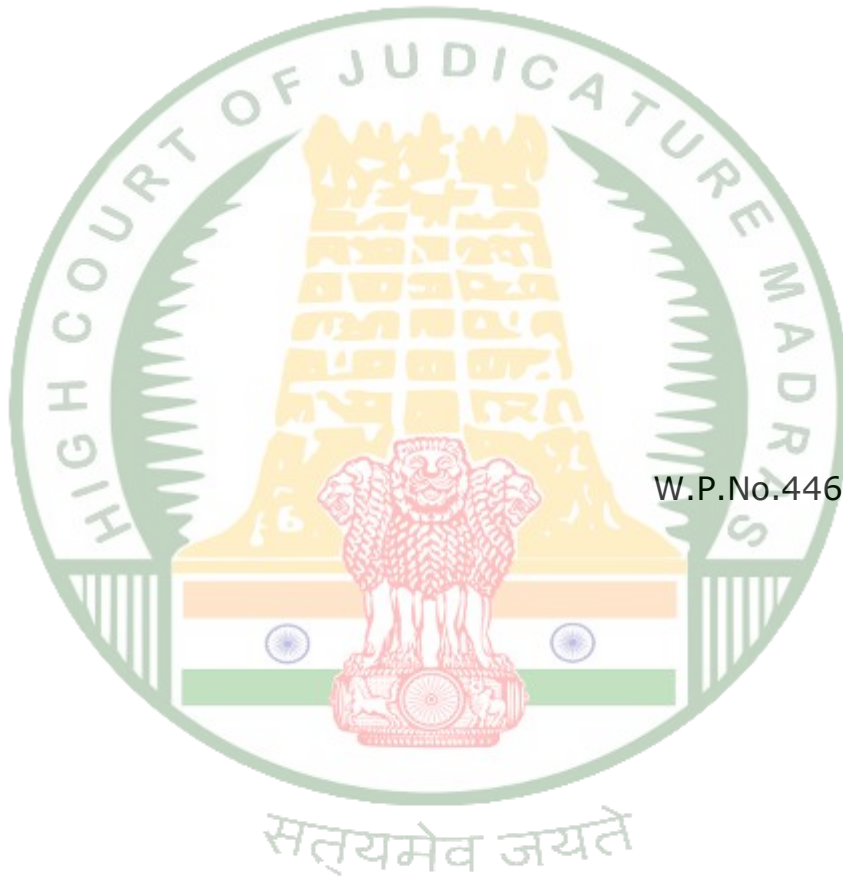
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