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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2018

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.17684 of 2018

S.Nallarasu

... Petitioner

Vs.

1.The Secretary to Government,
Department of Revenue,
Fort St.George,
Chennai 600 009.

2.The District Collector,
O/o.The District Collector,
Karur.

3.The Revenue Divisional Officer,
O/o. The Revenue Divisional Officer,
Karur.

4.The Thasildar,
Aravkurichi Taluk,
Karur District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the proceedings of the 2nd respondent made in Na.Ka.A1/1787/2018 dated 26.03.2018 and quash the same and consequently, direct the respondents to provide employment to the petitioner under compassionate ground.

For Petitioner : Mr.R.Aravind Raj
For Respondents : Mr.M.Pandiarajan, AGP

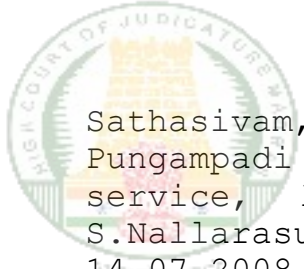
O R D E R

The petitioner has come forward with the present Writ petition seeking to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the respondents made in Na.Ka.A1/1787/2018 dated 26.03.2018 and quash the same and consequently, direct the respondents to provide employment to the petitioner on compassionate ground.

2.The learned Additional Government Pleader takes notice for the respondents 1 to 4. By consent, the writ petition itself is taken up for final disposal.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The case of the petitioner is that his father viz.,



Sathasivam, who was working as Village Administrative Officer at Pungampadi Melapagam Village, died on 06.05.2007 while he was in service, leaving behind his two children viz., S.Gowri and S.Nallarasu and both of them were minors at that time. On 14.07.2008 and 02.08.2010, the petitioner's mother submitted representations to the 2nd respondent, seeking employment for her minor daughter on compassionate ground. However, the 2nd respondent by a proceedings dated 09.11.2011 rejected the request of the petitioner's mother stating that the petitioner's sister has not completed 18 years of age at the time of submitting such application. Thereafter, the petitioner's sister got married. Therefore, the petitioner has submitted a representation on 27.06.2016 to the 2nd respondent by enclosing relevant documents including no objection letter of his mother and also his sister for providing employment to him on compassionate ground. Since no action has been taken, the petitioner has filed a Writ Petition in W.P.(MD)No.202 of 2018 before this Court seeking a direction to the 2nd respondent to consider his representation dated 27.06.2016. This Court by order dated 22.01.2018 directed the 2nd respondent to consider the representation of the petitioner.

4.The grievance of the petitioner is that by the impugned proceedings dated 26.03.2018 the 2nd respondent has rejected the request of the petitioner stating that already 11 years have lapsed and the request of the petitioner's sister has already been rejected, the petitioner is not entitled to claim appointment on compassionate. Challenging the same, the petitioner is before this Court with the aforesaid prayer.

5.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6.Admittedly, the petitioner's sister was minor at the time of death of his father and his mother has submitted representations for appointment on compassionate ground to his sister within a period of 3 years from the date of death of his father. It is seen that the petitioner has not submitted any application for compassionate appointment within a period of 3 years from the date of death of his father. However, on attaining the age of 18 years, he sent the application for compassionate appointment stating that his sister has got married, but, the same was rejected by the present impugned order.

7.The person, like the petitioner must realize that this Court is not a recruiting agency and that compassionate employment cannot be granted as a matter of course as held by the Hon'ble Supreme Court in the case of Bhawani Prasad Sonkar vs. Union of India and others, reported in 2011 (3) LLN 37 (SC). The relevant portion of the judgment of the Honourable Supreme Court is extracted as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne



in mind:

(i) Compassionate employment cannot be made in the absence of Rules of Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the Scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz., Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III & IV posts."

8. In another decision of the Hon'ble Supreme Court reported in 2014 (1) LLN 515 (Mad.)-R.Kanagasanthi vs. Tamil Nadu Civil Supplies Corporation}, the Supreme Court has held in paragraph 12 as under:

"12. At this juncture, it is relevant to point out Paragraph No.20 of a decision reported in Bhawani Prasad Sonkar vs. Union of India and others {2011 (3) LLN 37 (SC) : 2011 (4) SCC 209, wherein the Hon'ble Apex Court has held as follows:

Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:-

(i) Compassionate employment cannot be made in the absence of Rules of Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

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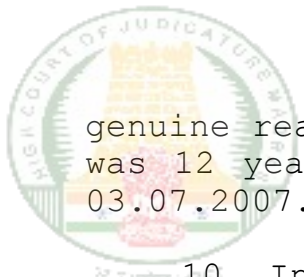
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death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largessee irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz., parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

In that case, the Hon'ble Apex Court has allowed the case of the Appellant by holding that testing on the touchstone of these broad Guidelines governing appointment on compassionate ground, it was of the opinion that the Appellant has made out a case for such appointment. As far as the case in hand is concerned, the Application for compassionate ground appointment was made within the time limit. It has also been held in a catena of decisions of the Hon'ble Apex Court that to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner, Compassionate Appointment has got to be made. This has been established by the petitioner. The spirit of the Compassionate Appointment was to provide relief to the family members of the deceased persons and that on yardstick of social justice, such relief cannot be withdrawn retrospectively as the Government stopped appointments for certain periods and when there was a modification, after lifting the ban, the new scheme or modification has to take effect only prospectively. The Writ Petitioner has rightly contended that when there is a change in policy on 5.4.2007, while lifting the Ban, it could not result in denial of Compassionate Appointment to the petitioner, as any change would only be prospective in nature.

9. When the petitioner's father died, he was 3 years and after 20 years ie., at the age of 23, the petitioner has made a representation. He has not made any representation within 3 years from the date of attaining 18 years. Even otherwise, the petitioner has not applied within 3 years from the date of attaining 18 years. The petitioner's sister's date of birth was 20.05.1993 and 14 years at the time of death of her father. Trying to get employment under some pretext, the petitioner has come to this Court, but not on



genuine reason. On the date of death of the petitioner's father, he was 12 years old as it could be seen from death certificate dated 03.07.2007.

10. In view of the above, this Court is not inclined to grant the relief to the petitioner. Hence, the Writ petition is dismissed. No costs.

Sd
ASSISTANT REGISTRAR (RTI)

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To

- 1.The Secretary to Government,
Department of Revenue, Fort St.George,Chennai 600 009.
- 2.The District Collector,
O/o.The District Collector, Karur.
- 3.The Revenue Divisional Officer,
O/o. The Revenue Divisional Officer,
Karur.
- 4.The Thasildar, Aravkurichi Taluk, Karur District.

1CC TO MR. R. ARAVINDRAJ, ADVOCATE SR 78209
1CC TO THE SPL GOVT PLEADER SR 77723

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