

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 308 of 2018

T. Kubendra Prasad ... Appellant/Petitioner

-vs-

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

2. The Secretary,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

... Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 31.10.2017 made in W.P. No. 24769 of 2014.

WP.NO. 24769 OF 2014 PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, Calling for the records of the 2nd respondent in his proceeding No.SCT 5/7430/2013/ GA dated 5.3.2014 and quash the same and consequently direct the respondents herein to forthwith appoint the petitioner on compassionate ground in Group C Post in Chennai Port Trust.

For Appellant : Mr. K. Raja
For Respondents : Mr. Haja Mohideen Gisthi
Senior Central Government
Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The father of the Appellant, viz., G. Tilak Prasad, who was working as Motor Driver (FC), Engineering Department of Chennai Port Trust, died in harness on 19.08.2007 leaving behind his

wife, one son and one daughter. The Appellant made an application on 05.12.2007 to grant compassionate appointment and in response to the proceedings No. SCT5/16874/2007/GA dated 10.08.2009 of the Secretary of the Chennai Port Trust, the Appellant submitted the proforma and he was assigned D.R. No. 2819 vide proceedings No. SCT5/16874/09/GA dated 12.11.2009. The Appellant had made a representation dated 10.08.2010 for issuing appointment order and by order dated 17.11.2011 in W.P. No. 26510 of 2011 filed by the Appellant, this Court directed the authorities of the Chennai Port Trust to dispose the representation of the Appellant within twelve weeks from that date.

2. The authorities of the Chennai Port Trust by proceedings No. SCT5/1835/2012/GA dated 28.03.2012 informed that 5% of direct recruitment vacancies in Group C and D posts are earmarked for compassionate appointment and that the name of the Appellant had been included in the register maintained for that purpose and in terms of O.M. No. 14014/19/2002, Establishment Department dated 05.05.2003, the names of the dependents of deceased employees considered for compassionate appointment are weeded out from the register if appointment could not be made within three years and their case cannot be considered for appointment in future. However, in view of the directions passed by this Court on 17.11.2011, the representation dated 10.08.2010 of the Appellant was again examined and it was found that as per the guidelines of the Government for compassionate appointment, the request of the Appellant could not be considered. The Appellant challenged the said proceedings No. SCT5/1835/2012/GA dated 28.03.2012 in W.P. No. 11706 of 2012 before this Court, which was disposed by order dated 09.01.2014 holding that the Appellant was entitled to the same benefits as granted by the First Bench of this Court in A. Sumathi -vs- Chairman, Chennai Port Trust (Order dated 14.02.2012 in W.A. No. 2453 of 2011) and accordingly, the impugned order in that Writ Petition was set aside and the Respondents were directed to consider the claim of the Appellant for appointment on compassionate grounds without reference to the reasons stated in the impugned order and pass appropriate orders within a period of four weeks from the date of receipt of copy of that order.

3. Before proceeding further, reference may be made to the decision of this Court in A. Sumathi -vs- Chairman, Chennai Port Trust (Order dated 14.02.2012 in W.A. No. 2453 of 2011), which has been relied in the aforesaid order, and the same reads as follows:-

"Heard the Learned Counsel for the Appellant and perused the impugned order passed by the Learned Single Judge. Admittedly, the case of the Respondent for appointment on compassionate grounds was

entertained and her name was kept in the Register for being considered for compassionate appointment. However, the appointment was delayed at the instance of the Appellant for more than three years and thereafter, the name of the Respondent was de-listed from the Register and she was denied appointment. Once a case for compassionate appointment is made out, it cannot be denied on the basis of the discretion exercised by the officials of the Appellant. The Learned Single Judge, therefore, allowed the Writ Petition for justifiable reasons, which need no interference by this Court. This Writ Appeal is accordingly dismissed. There shall be no order as to costs."

4. In pursuance of the directions passed by this Court, the concerned authorities of the Chennai Port Trust by proceedings No. SCT5/7430/2013/GA dated 05.03.2014, again considered the request of the Appellant for compassionate appointment and passed the following order:-

"....A committee constituted in this regard for making a spot survey to assess the penurious condition. The Committee has visited your residence twice and had collected the following particulars as furnished by you.

1. An amount of Rs.11,000/- is being drawn by you towards monthly salary from M/s. Nathella Jewellery, Chennai.
2. An amount of Rs.17,000/- is being received by your mother towards monthly family pension from the Trust who is living with you.
3. An amount of Rs.15,000/- is being receiving by you towards rent from the house owned by you (Ground floor and first floor).
4. Your family has received an amount of Rs.4,82,823/- (DCRG-Rs.3,50,000/-, P.F.-Rs.72,823/- & Others-Rs.60,000/-) towards settlement from the Trust.
5. By residing in a rented house at Kodungaiyur, Chennai, you are paying an amount of Rs.5,500 towards its rent.

While scrutinizing the above facts and application of Government instruction that if the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence.

In view of the above, your request for compassionate appointment cannot be considered. However, you are advised to meet the undersigned for guidance to produce necessary documents for scrutiny

regarding settlement of one time lump sum compensation package in lieu of compassionate appointment as approved by the Ministry."

As the Appellant was not satisfied with the lump sum compensation package in lieu of compassionate appointment, he challenged the aforesaid order in W.P. No. 24769 of 2014 before this Court.

5. The Learned Judge, who heard the Writ Petition, by an elaborate order dated 31.10.2017, after referring to the various pronouncements of the Hon'ble Supreme Court of India and this Court on the object and scope of compassionate appointment, held that the same cannot be granted after a reasonable period and proceeded to dismiss the Writ Petition. The Appellant has preferred the present appeal against the aforesaid order.

6. We have heard Mr. K. Raja, Learned Counsel appearing for the Appellant, Mr. Haja Mohideen Gisthi, Learned Senior Central Government Standing Counsel appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

7. In a recent decision in Government of India -vs- P. Venkatesh (Judgment dated 01.03.2019 in Civil Appeal No. 2425 of 2019), the Hon'ble Supreme Court of India has deprecated the practice of issuing repeated directions to dispose representation for appointment on compassionate grounds after successive rejections and the disastrous effects which it has in contributing to docket explosion, as follows:-

"The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected on 3 January 1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then re-consider the representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on 13 November 2007, it was only in 2010 that the Tribunal

was moved again, with the same result. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9 August 2016, nearly twenty one years had elapsed since the date of the death of the employee.

....

The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the High Court is unsustainable."

In view of the aforesaid dictum, we are of the considered view that it is incumbent upon this Court to first examine whether the claim of the Appellant for compassionate appointment could still survive at this distance of time.

8. The legal position regarding appointment to the public services on compassionate grounds has been lucidly summarized by the Hon'ble Supreme Court of India in Umesh Kumar Nagpal -vs- State of Haryana [(1994) 4 SCC 138], as follows:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of application and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there

are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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. 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. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. 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."

Recapitulating that compassionate appointment is an exception to the general rule, the Hon'ble Supreme Court of India in State of Jammu and Kashmir -vs- Sajad Ahmed Mir [(2006) 5 SCC 766], has held as follows:-

"11. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution."

Again, the Hon'ble Supreme Court of India in Local Administration Department -vs- M. Selvanayagam [(2011) 13 SCC 42], has held as follows:-

"11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependants is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependants and the financial deprivation caused to the dependants as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an

appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.

14. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments."

9. The facts of the case on hand clearly reveal that the family of the deceased breadwinner has been able to tide over the crisis with the passage of time for more than a decade. The widow of the deceased employee is receiving family pension of Rs.17,000/- per month which would suffice to meet her sustenance. The Appellant, who was aged about 24 years at the time of the demise of his father, was expected of him to secure employment on the basis of his own merit by competing with other citizens of the country, if he wanted to join any public employment. The mere circumstance that the father of the Appellant died while in public employment cannot confer any indefeasible right to the Appellant to also secure public employment as a matter of course. As such, if any indulgence is shown by this Court by directing the Respondents to consider the Appellant for appointment on compassionate grounds now, it would unwittingly tantamount to unduly favouring the Appellant to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced. In the light of the legal principles that have been repeatedly emphasized by the Hon'ble Supreme Court of India extracted supra, we do not find any justification to interfere with the order of the Writ Court declining at the threshold to entertain the Writ Petition seeking compassionate appointment of the Appellant. There is nothing which precludes the Appellant from competing for appointment to any post in normal mode of recruitment as applicable to all other similarly placed persons, based on his eligibility and qualifications, if he intends to

support his family members out of the remuneration earned from his employment.

10. In the upshot, the Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.
2. The Secretary,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No. 34501

+1cc to Mr.K.Raja, Advocate, S.R.No. 34498

W.A. No. 308 of 2018

PP (CO)
GN (22/04/2019)

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