

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.10.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.16286 of 2019

and

W.M.P.No.15971 of 2019

P.Govindaraj

..Petitioner

vs

1.The Commissioner of Sugars,
No.690, Anna Salai,
Nandanam,
Chennai-600 035.

2.The Managing Director,
Tirupattur Co-operative Sugar Mills,
Kethandapatti,
Tirupattur Taluk,
Vellore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order 30.09.2015 passed by the 2nd respondent made in Na.Ka.No.10242/Pa.A/2015 and to quash the same and consequently direct the respondents to consider the petitioner on compassionate appointment for the death of his father V.Panneerselvam (Assistant) who died on 20.08.2002 during the course of employment and to appoint the petitioner in their services for a suitable post based on the educational qualification of the petitioner.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader for R1

: Mr.R.Bala Ramesh
Special Government Pleader for R2

O R D E R

Writ Petition is filed for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order 30.09.2015 passed by the 2nd respondent made in Na.Ka.No.10242/Pa.A/2015 and to quash the same and consequently direct the respondents to consider the petitioner on compassionate appointment for the death of his father V.Panneerselvam (Assistant) who died on 20.08.2002 during the course of employment and to appoint the petitioner in their services for a suitable post based on the educational qualification of the petitioner.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents. By consent of both sides, the writ petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that the petitioner's father was working as Assistant in the 2nd respondent Sugar Mill and he died in harness on 20.08.2002. Immediately on 07.02.2003, the mother of the petitioner made a representation to the 2nd respondent who is the competent authority seeking to provide compassionate appointment. On 03.12.2014, the 2nd respondent sent a communication to the petitioner stating that the petitioner was directed to produce proof within a period of 15 days for making application under compassionate appointment within a period of three years from the date of death of the petitioner's father and in failure, the name of the petitioner cannot be maintained in the waiting list. Though the explanation of the petitioner was made satisfactorily, but, without considering the explanation, the 2nd respondent passed impugned order rejecting the petitioner's application on the ground that the application was made beyond three years. Challenging the impugned order dated 30.09.2015, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner would submit that the petitioner have no proof to establish that the petitioner made the application within a period of three years. However, the 2nd respondent sent a communication dated 03.12.2014 to resubmit the application for compassionate appointment as if the application was made within three years with other relevant documents and consequently, on 30.09.2015, the said application was rejected on the ground that the application was made beyond three years. Challenging the said impugned order this writ petition is filed.

5. The learned Special Government Pleader appearing for the respondent would submit that the petitioner has participated in

the enquiry in which he fairly conceded that the application was made beyond three years. Hence, the application for compassionate appointment after three years, cannot be considered which is against the provision of the said scheme. Further, the learned Special Government Pleader appearing for the respondents would submit that the applications was rejected in the year 2014 and 2015 and the petitioner has not filed this writ petition immediately and filed the same after four years and there is no proper explanation for the delay in filing the writ petition.

6. Considering the facts and circumstances of the case, it is made clear that the petitioner's father died in the year 2002 and thereafter, when the petitioner made an application, it was rejected on the ground that the petitioner has not made the application within a period of three years. The 2nd respondent has passed two impugned orders on 03.12.2014 and 30.09.2015. However, the petitioner has filed this writ petition only challenging the impugned order dated 30.09.2015 and not challenging the order dated 03.12.2014.

7. This Court perused the application of the petitioner dated 14.10.2015 in which an endorsement was made as 3 ஆண்டுகள் கழித்து மனு கொடுத்துள்ளதை மனுதாரர் ஒப்புக் கொண்டுள்ளார்.

8. Similar type of issue was discussed by the Hon'ble Apex Court in Sanjay Kumar v. State of Bihar reported in (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 v. Pushpendra Kumar (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.

9. In *Umesh Kumar Nagpal v. State of Haryana* (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 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over".

10. In *State of Manipur v. 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 v. Union of India* (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.) v. Union of India* 1991 Supp (2) SCC 689) and *Union of India v. Bhagwan Singh* (1995) 6 SCC 476). In *Director of Education (Secondary) v. Pushpendra Kumar* (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 thereby nullify the main provision by taking away completely the right conferred by the main provision".

11. In *Steel Authority of India Limited v. Madhusudan Das* (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 therefore, 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 v. Anju Jain* (2008) 8 SCC 475, para 33]"

12. In *MGB Gramin Bank v. 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.

13. For the reasons above stated and applying the ratio laid down by the Hon'ble Apex Court, this Court is not inclined to interfere with the order passed by the respondent. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

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Sub Assistant Registrar

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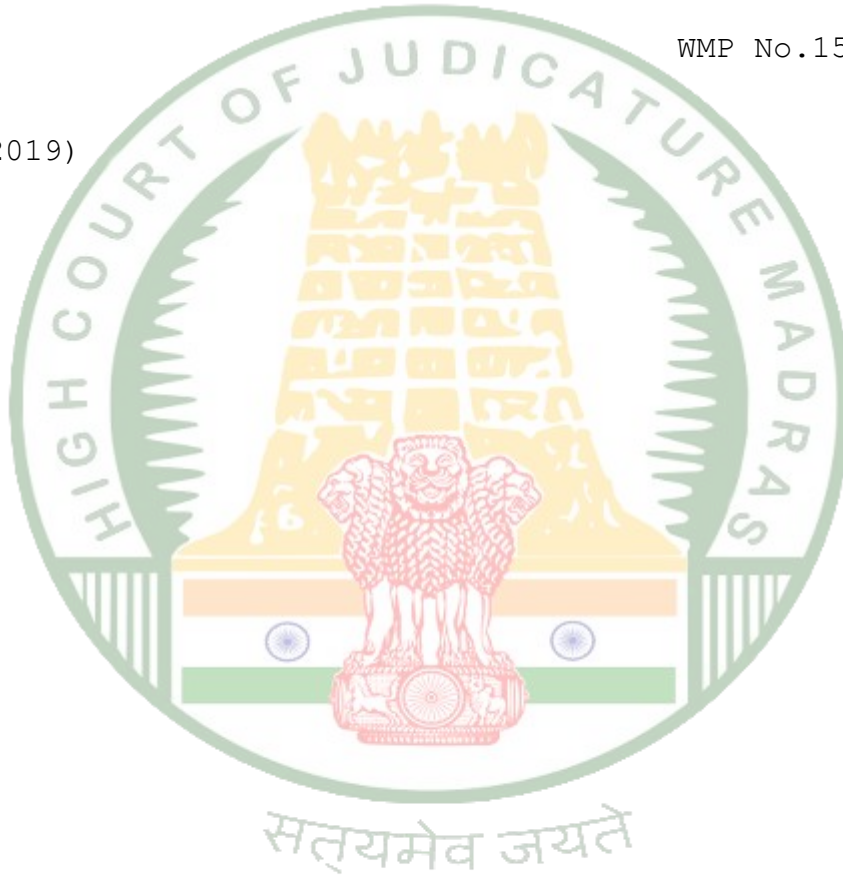
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+1cc to Mr.C.Prabaharan, Advocate, S.R.No. 84632
+1cc to Mr.R.Bala Ramesh, Advocate, S.R.No. 84340
+2cc to the Government Pleader, S.R.No. 84535, 85052

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VG II(CO)
GN(21/11/2019)



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