

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.04.2019
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.16899 of 2018
and
W.M.P.No.20097 of 2018

Mrs K.Dhanalakshmi

... Petitioner

-Vs-

- 1.The Director of Collegiate Education,
9th Floor, EVK Sampath Buildings,
College Road, Chennai - 600 006.
 - 2.The Joint Director of Collegiate Education,
Rajah Serfoji Government College,
Thanjavur - 603 005.
 - 3.The Secretary,
Dharmapuram Adhinam Art and Science College,
Dharmapuram,
Mayiladuthurai - 609 001.
- ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to directing the respondents to appoint petitioner in the post of Assistant on compassionate grounds in pursuance of the G.O.No.154 dated 07.02.1986 and 1499 dated 03.08.1989 and the 1st respondent's proceedings vide Na.Ka.No.17509/G3/2009 dated 13.07.2009.

For petitioner : Mr.P.B.Sampath Kumar

For respondents: Mr.V.Kadhirvelu
Special Government Pleader
for R1 & R2

Mr.S.Sounther for R3

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ORDER

The relief as such sought for in the present writ petition is for a direction to direct the respondents to appoint the petitioner in the post of Assistant on Compassionate Grounds in pursuance of G.O.Ms.No.154, dated 07.02.1986, and 1499 dated 03.08.1989 and the 1st respondent's proceedings vide Na.Ka.No.17509/G3/2009 dated 13.07.2009.

2. Post can never be claimed as a matter of choice by the legal heirs of the deceased employee for appointment on compassionate grounds. Compassionate Appointment itself is a concession and can never be claimed as a matter of legal right. The very purpose and object of compassionate appointment is to mitigate the circumstances arisen on account of sudden death of an employee. Thus, the scheme of compassionate appointment is to be provided in order to meet out the emergency circumstances and certainly not to suit the convenience of the persons, who are all claim appointment on compassionate grounds.

3. The present case on hand is a classic one, where the writ petitioner claims that she is entitled to be appointed for the post of Junior Assistant/ Typist.

4. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is a Post Graduation Degree holder and therefore, she must be appointed in the post of Assistant or to the higher post and certainly not in the post of Office Assistant. Admittedly, writ petitioner has already been offered for the post of Office Assistant on compassionate grounds. However, the writ petitioner is not willing to accept the post of Office Assistant, as she feels that the appointment on compassionate grounds must be provided in commensuration with the qualifications acquired by her.

5. The above said contention is not a concept of compassionate appointment. The very concept of compassionate appointment is to meet out the penurious circumstances and it is not the purpose of the scheme of compassionate appointment that an appointment to be made in commensuration with the Educational Qualifications possessed by the legal heirs of the deceased employee. Thus, the scheme of appointment on compassionate grounds can never be misinterpreted or it is not necessary that the employer must be provided appointment in commensuration with the educational qualifications possessed by the persons, who are all submitting applications.

6. In our vast country, now educated youth are applying even for basic service posts. Even the High Courts are experiencing that for the post of Office Assistant and Sweepers large number of applications are submitted by the candidates, who all are possessing the educational qualifications of Post Graduation Degree, B.E., and many other Degrees granted by the various Universities across the Country.

7. This being the seriousness of the unemployment prevailing in our country, here is the petitioner who comes out with the present writ petition for consideration of her educational

qualifications and sought that she must be appointed to the post of Assistant on compassionate grounds.

8. Compassionate appointment is in violation of Article 14 and 16 of the Constitution of India. The persons who all are appointed on compassionate grounds are without undergoing the process of selection and no written examination is conducted. Only on submitting applications, appointments are made on verification of certificates and documents. Such a process of appointment is in violation of the Constitutional Schemes. Equal opportunity in public employment is the constitutional mandate and all eligible persons who all are aspiring to secure public employment must be provided with an opportunity to participate in the process of selection through open competitive process. In the absence of adherence to the equality clause enunciated under the Constitution, all such special schemes and concessions are to be construed as violation of Article 14 and 16 of the Constitution of India.

9. This being the legal principles and the philosophy of the Constitution, this Court is of an undoubted opinion that special schemes like compassionate appointment must be provided in a restricted manner, so as to avoid inequality in the matter of providing public employment by following the equality clause.

10. Lakhs and Lakhs of youth of this great Nation are burning their midnight lamps for securing public employment by their hard work and by participating in the open competitive process. When such special schemes like compassionate appointment are implemented by expanding the scope of the scheme, then all the eligible candidates are deprived of their rights to participate in the process of selection. Thus, the strict implementation of such special schemes are certainly warranted and the Authorities Competent should also keep in mind that the compassionate appointment cannot be granted beyond the scope of the scheme.

11. In this context, it is relevant to cite that the writ petitioner, who had already been offered with an appointment to the post of Office Assistant and she is not prepared to accept the same, as she is the Post Graduation Degree holder and as such, she claims for the higher post of Assistant.

12. Undoubtedly, When the writ petitioner has spontaneously not accepted the offer of appointment granted by the Management to the post of Office Assistant, this Court is bound to draw the factual inferences that writ petitioner is not willing to accept the offer of appointment to the post of Office Assistant. Thus, the writ petitioner is of an opinion that she must secure higher post of appointment on compassionate grounds. Such an opinion

can never be encouraged by the Constitutional Courts.

13. Contrarily, if the writ petitioner is willing to secure higher post, it is left open to the writ petitioner to participate in the open competitive process and secure appointment on merits and by competing with all other eligible candidates who all are willing to participate in such process of selection. Contrarily, the writ petitioner cannot seek a back door method to secure appointment on compassionate grounds for the higher post. When the very purpose and object is to mitigate the circumstances arising on account of sudden death of employee, the legal heirs of the deceased employee must accept the offer for the purpose of saving the family. If the family is able to lead their life without the assistance of compassionate appointment, then the legal heirs need not be provided with an order of compassionate appointment. One of the terms and conditions prescribed in the scheme itself is to ascertain whether the family is in penurious circumstances or not. Thus, the Competent Authority is bound to conduct an enquiry in respect of the properties owned by the family of the deceased employee and the income from various other sources to the family. Only in the event of establishing such penurious circumstances, the legal heirs of the deceased employee is entitled to seek appointment on compassionate grounds. Thus, all the terms and conditions are to be strictly followed by the Authorities Competent.

14. However, in the present case on hand the writ petitioner has already been offered with an order of appointment to the post of Office Assistant. Thus, it is for the writ petitioner to take a decision whether to continue in the offered post or to aspire for a higher post through open competitive process. Contrarily, the writ petitioner cannot file a writ petition for the purpose of securing higher post of Assistant and she determines that she is qualified for the post of Assistant as she is having the Post Graduate Degree. Undoubtedly, a Master's Degree holder is qualified not only for the post of Assistant but he is qualified for the post of Group-I services and to the posts of UPSC services and many more. Thus, it is wide open to the writ petitioner to participate in the process to secure appointment on merits and by competing with all other eligible candidates.

15. Contrarily, she cannot secure posts of her choice by filing the writ petition, more specifically on compassionate appointment. Under these circumstances, the writ petitioner is absolutely not established any acceptable legal grounds for the purpose of considering her claim to appoint her in the post of Assistant on Compassionate grounds.

16. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Director of Collegiate Education,
9th Floor, EVK Sampath Buildings,
College Road, Chennai - 600 006.

2.The Joint Director of Collegiate Education,
Rajah Serfoji Government College,
Thanjavur - 603 005.

+2cc to Mr.P.B.Sampath Kumar, Advocate sr.34425
+1cc to Government Pleader sr.34704
+1cc to Mr.S.Sountha, Advocate sr.34402

W.P.No.16899 of 2018
and
W.M.P.No.20097 of 2018

pm(co)
nr 09/05/2019

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