

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.11006 of 2014

R.Amirtham

... Petitioner

vs.

1. The General Manager,
Puducherry Road Transport Corporation,
Puducherry.
 2. The Secretary to Government,
Puducherry Road Transport Corporation,
Chief Secretariat,
Puducherry.
 3. The Under Secretary to Government (SA),
Chief Secretariat,
Puducherry.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus, directing the Respondents to give suitable job to the Petitioner in proportion to the Petitioner's educational qualification M.Com. on compassionate ground.

For Petitioner : Mr.K.Srinivasan

For 1st Respondent : Mr.A.Jayachandran

For Respondents 2 and 3 : Mrs.N.Mala,
Addl. Govt. Pleader (Pondy)

ORDER

Petitioner has come up with this Writ Petition seeking a direction to the Respondents herein to give her suitable job in proportion to her qualification M.Com. on compassionate grounds.

2. According to the Petitioner, her father viz. T.Raja Ram, who had been working as a Conductor in Puducherry Road Transport Corporation, met with an accident on 27.11.2011, while on duty at Trichy and died in harness in Trichy Government Hospital. The Petitioner's mother, who is drawing monthly

pension of Rs.2051/-, made a representation dated 20.06.2013 to the Respondent/Corporation seeking a job to the Petitioner herein on compassionate grounds.

3. The 1st Respondent/Transport Corporation filed counter affidavit, wherein, it is stated that the Petitioner's father was appointed on 20.07.1991 in their Transport Corporation, made permanent on 01.01.1995 and died in an accident on 27.11.2011 during his duty in Bus bearing No.PY-01 BK 9141 via Pondichery to Nagercoil. According to the 1st Respondent/Transport Corporation, the Petitioner has not fulfilled her service conditions for pursuing job on compassionate grounds and that there is no vacancy in their Corporation for the petitioner's qualification. The 1st Respondent has further stated that they have never recruited any candidate on compassionate grounds right from the year 2006 and as such, there are nearly 27 candidates including the Petitioner, waiting to be appointed.

4. To the question posed by this Court as to how the Writ Petition seeking Compassionate Appointment is maintainable, learned counsel for the Petitioner submitted that the Petitioner's case may be considered for any suitable post and that she cannot be deprived compassionate appointment on the ground that she is a married woman.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. It is not in dispute that the Petitioner's father died in an accident which occurred on 27.11.2011, while on duty and that the Petitioner's mother is drawing pension of a sum of Rs.2051/- per month. It is also not in dispute that apart from the Petitioner, there are 26 other candidates waiting in queue for compassionate appointment and the Petitioner could not dispute the fact that there are no regular recruitments in the Respondent/Transport Corporation.

7. At this juncture, it is worth referring to the decision of the Apex Court in the case of Bhawani Prasad Sonkar vs. Union of India reported in (2011) 4 SCC 209, relevant portion of which, is extracted hereunder:

"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 de-hors 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 bread-winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largess 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."

8. Further, in a similar circumstance, in W.P.(MD) Nos.4129, 7045, 16624 and 20786 of 2014 and W.P.(MD) Nos.19455 and 19530 of 2018 [S.Gowtham Balu vs. The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai] decided on 24.09.2018, this Court has considered all the aspects pertaining to Compassionate Appointment and passed a detailed order by extending few suggestions to the Government. Relevant portion of the same is extracted hereunder:

"6. The Government may think of issuing a fresh Government Order, if they want to stick on compassionate appointment scheme and one such condition is that compassionate appointment would be considered only for Class-IV employment and that age can be relaxed and the qualifications

can be entirely relaxed, as there is no need for any qualification for the purpose of appointing the persons as sweeper, gardener and the like. In the event the spouse refusing to accept the Class-IV employment, the same can be rejected and the children, after becoming major, cannot seek for compassionate appointment. There should be a prescribed procedures so that the application can be routed through Email and the said application will have to be considered and orders to be passed within the stipulated time. For making an application a time limit can be fixed as one year instead of three years. The appointment through compassionate appointment is a substantial litigation in this Court and the Government should ensure that they take an unbiased decision within a maximum period of six months so that the applicant will know where they stand. As a matter of right, the applicant cannot demand that based on the higher qualification they shall be appointed in Class-III posts, as the Class-III posts is meant either for promotion or for direct recruitment and shall not be taken for compassionate appointment. In addition to the above, this Court expects the Government to take into account the following suggestions and issue a Government Order immediately so that it can be given effect to from 1st January, 2019:

(i) the compassionate shall be made within a period of one year from the date of death of the deceased Government employee;

(ii) the qualification for Class-IV employees can be completely exempted for the purpose of giving compassionate appointment and though Basic Rules provide for certain category of posts falling under compassionate appointment, the same is only illustrative in nature. For example, for appointment to the post of Sweeper, there is no need to prescribe any qualification and what is required is, it must be ensured as to whether persons to be appointed to the post of Sweeper on compassionate ground know to read and write and ride bicycle / two wheeler and other basic household / office works;

(iii) as held by the Hon'ble Supreme Court in the case reported in [(2011) 4 SCC 209], the purpose of compassionate appointment is to meet the sudden crisis and there is no need to keep a post to claim after 18 years. Therefore, it is clear that the request for appointment on compassionate ground for the child in the womb,

by seeking reservation of one post till the child' majority cannot be entertained;

(iv) whenever an application for compassionate appointment is made, it should be decided within a period of three months from the date of receipt of the said application and the person making such application for compassionate appointment should despatch the same either by speed post or by registered post. Once an application is received, it is open to the concerned authorities to call for the documents from the deponents / legal heirs so that her case can be considered and decision should be taken within a period of two months thereafter. Once a request is made calling for documents, the concerned person will have to submit the required documents within 15 days. If the application for compassionate appointment is not decided within three months from the date of receipt of such application, then the concerned Officer, who is responsible to take a decision thereon, should be removed from the post and posted in a non-sensitive post. This will avoid further litigation, as the persons applying for compassionate appointment have been approaching this Court for disposal of the representation after lapse of decades and getting an order so as to litigate unnecessarily and the order of disposal of representation is not a conclusive one for litigants, but a starting point of litigation;

(v) the documents sought by the concerned authorities should be uploaded by the application so that there would be no quarrel with regard to non-consideration of vital documents by the authorities, while scrutinizing the application for compassionate appointment. The applicant shall also furnish his/her Cell Number, Email Address, etc., to enable the authorities to communicate the order to be passed in his/her application.

(vi) for the sake of brevity, it is reiterated that the compassionate appointment should be restricted only to Class-IV employment instead of Class-III & IV so that the claim for compassionate appointment would be reduced;

(vii) in case compassionate appointment is considered other than the spouse, then 25% of the gross monthly income shall be directly paid to the spouse by way of NEFT or RTGS and the said

gross income is subject to income tax deductions. The reason for not granting 25% of the amount from the Nett salary is that the employee may take loans and ensure that the take-home salary is very less and the 25% of the amount payable on the Nett after loan deduction would be very meagre and will not be sufficient to have a square meal for the day for the spouse at the old age. Many of the children, after getting employment, are driving the parents to old age home and in order to ensure that the spouses are protected and taken care of, 25% of the amount has got to be given to them. As per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, it is the bounden duty of children to take care of them and their children should not be allowed to leave their parents in lurch, thereby letting them scot-free and the old aged people at the fag end of their life are rushing to Courts to get money from their children. In order to avoid such a haphazard situation, this Court wants to ensure that 25% of the gross shall be paid to the spouses, which would be subjected to income tax payable by the employee.

(viii) the spouse, who is getting 25% of the amount as mentioned supra shall produce the life certificate once in a year preferably on the 1st March of every year;

(ix) we suggest that the Government issues a Government Order to that effect, as the Court is burdened with not less than 5% of the service matters, seeking employment on compassionate ground from various departments, such as Electricity Board, etc and since there is no uniform guidelines for all the Government departments, there is always a confusion and chaos, thereby creating unnecessary litigations;

(x) the compassionate appointment shall not be considered as a back door entry and it is based on rules, regulations, guidelines and Government Orders. However, it should be remembered that compassionate appointment is not an usual recruitment process and the candidates seeking such appointment will have to satisfy all the requirements contemplated under the Rules with regard to the age, qualification, etc, but however, it is subject to relaxation depending upon the circumstances of each case."

9. That apart, this Court has also held that back-door entry should be prevented. In the case on hand, the relief sought by the Petitioner as such, cannot be granted. However, taking into account the facts and circumstances of the present case, this Court directs the Respondents herein to consider the case of the Petitioner for Class IV post only along with other candidates, who are in the queue seeking compassionate appointment, if she is otherwise found eligible, by relaxing the age limit. However, it is made clear that the Petitioner, as a matter of fact, cannot demand employment on compassionate grounds.

In fine, this Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected W.M.P.No.2589 of 2019 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The General Manager,
Puducherry Road Transport Corporation,
Puducherry.
2. The Secretary to Government,
Puducherry Road Transport Corporation,
Chief Secretariat,
Puducherry.
3. The Under Secretary to Government (SA),
Chief Secretariat,
Puducherry.

+1 cc to M/s.A.R.Nixon, Advocate Sr.No. 62553
+1 cc to The Government Pleader Sr.No.62412

AKM/27.09.19/7P- 6C /

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