

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2019

PRONOUNCED ON : 25.04.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17332 of 2017 and

W.M.P.No.18840 of 2017

- 1.Union of India rep. By
The Chief Post Master General,
Tamil Nadu Circle, Chennai - 600 002.
- 2.The Senior Superintendent of Post Offices,
Kanniyakumari Division,
Nagercoil - 629 001. ... Petitioners

V.

- 1.H.Ajayan
- 2.The Central Administrative Tribunal,
Rep. By its Registrar,
Madras Bench, Chennai - 600 104. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 2nd Respondent and quash the order dated 24.06.2016 in OA.No.310/01026/2016 as the same is unsustainable.

For Petitioners : Dr.D.Simon, CGSC

For 1st Respondent : Mr.T.Shanmugam

For 2nd Respondent : Tribunal

O R D E R

M.VENUGOPAL, J.

Heard both sides.

2.Earlier, in O.A.No.310/01026/2016 filed by the 1st Respondent/Applicant, the 2nd Respondent/Tribunal at paragraph 7,

had observed the following:

"7.A mere running of the eye over it would contain the exemplify and demonstrate that while considering the candidature of the applicant for compassionate appointment, the scheme as it existed as on the date of the death of the applicant's parent, should be taken into account. It is clear that the father of the applicant died during the year 2001 and, as such, the respondent authority was excepted to apply the then existed scheme for compassionate appointment and accordingly, they should have processed the application of the applicant for compassionate appointment. The details concerning the merit points awarded were also not furnished in the communications contained in Annexure - A8 & A9, as such, I am of the view that I could dispose of the OA without going into the substantive merit of it by issuing the following direction:

'The respondent authority shall reconsider the candidature of the applicant by applying the then existed scheme for giving compassionate appointment as on the date of the death of the father of the applicant in the year 2001, and, accordingly, process the matter and communicate the result of the applicant by a speaking order within a period of three months from the date of receipt of copy of this order.' "

and disposed of the Original Application at the admission stage without costs.

3. According to the Petitioners, father of the 1st Respondent K. Haridasan Nair, while working as Sub Postmaster, Kaliakkavilai SO under Kanniyakumari Division, died while in service on 15.02.2001. In fact, the 1st Respondent (son of the deceased Employee) had submitted his application with documents addressed to the 2nd Petitioner requesting for an appointment as Postal Assistant under Compassionate Grounds in relaxation of Recruitment Rules. The claim for Compassionate Appointment is required to be processed by observing specific Rules governing the Compassionate Appointment in the light of instructions specified under DoPT Letter No.14014/6/94-Estt(D) dated 09.10.1998, for which necessary proposal supported by records and documents are to be submitted to the Review Committee at Circle Level.

4.It is the submission of the Learned Counsel for the Petitioners that in terms of O.M.No.14014/6/95-Estt(P) dated 26.09.1995 of Ministry of Personnel, PG & Pensions communicated in Postal Directorate, New Delhi Letter No.24-170/94-SPB I dated 11.12.1995 consideration of appointment on Compassionate Grounds should be with reference to the position about availability of vacancies within the ceiling of 5% falling under Direct Recruitment in Group C and Group D Posts.

5.The Learned Counsel for the Petitioners brings it to the notice of this Court with a view to assess the degree of indigence among all the claimants for Compassionate Appointment within the specified ceiling of 5% of the Direct Recruitment vacancies, the Relative Merit Point System was enunciated by the Postal Directorate through Letter No.37-36/2004-SPB I/C dated 20.01.2010 in and by which the Compassionate Appointments will have to be processed by allocating points based on various attributes such as financial condition of the family like assets, liabilities, size of the family, essential needs of the family like education of children etc. As a matter of fact, in order to have objectivity and to ensure complete transparency and uniformity in the selection process, the aforesaid system was introduced.

6.The Learned Counsel for the Petitioners comes out with a plea that the case was placed before the CRC 2012/CRC 2013 only because of the fact that the compassionate appointment was sub-judice since the year 2000 which came to an end only during the year 2010. The RMP system was in vogue at that time and the case was examined by applying Relative Merit Points for checking the 'Indegency'.

7.The Learned Counsel for the Petitioners contends that the 1st Respondent's case was examined along with other 875 applications for Compassionate Appointment applying the Relative Merit Points as prescribed by the Directorate through Letter No.37-36/2004-SPB I/C dated 20.01.2010. The Relative Merit Points granted to the 1st Respondent for consideration of his application for Compassionate Appointment was 35. In reality, the case of the 1st Respondent/ Applicant was not recommended by the 'Circle Relaxation Committee' in respect of the year 2015 owing to non-availability of Direct Recruitment Vacancy in the respective cadre under RRR Quota and case was less Indigent as per Relative Merit Points under RRR Quota and for want of 5% Direct Recruitment vacancies.

8.It is the case of the Petitioners that the Relative Merit Point for the candidates above 67 only was considered for selection in PA cadre and the decision of the Circle Relaxation Committee was communicated to the 1st Respondent through letter

No.B2/16-14/KH dated 29.09.2015 by the Petitioners. Before the 2nd Respondent/ Tribunal, the 1st Respondent/Applicant assailed the decision of the Circle Relaxation Committee in O.A.No.1026/2016.

9.The Learned Counsel for the Petitioners strenuously projects an argument that all the cases including the 1st Respondent's case were examined by the Scheme dated 09.10.1998 and by following an uniform procedure of applying Relative Merit Point System by Circle Relaxation Committee 2012.

10.The grievance of the Petitioners is that the 2nd Respondent/ Tribunal, by placing reliance on the decision of the Hon'ble Supreme Court in Canara Bank V. M.Mahesh Kumar, (2015) 7 SCC 412, allowed the application.

11.The Learned Counsel for the Petitioners submits that different Schemes were followed in connection with Compassionate Appointment at Canara Bank which runs as under:

During 1993	Providing compassionate appointment by the scheme named "Dyeing in Harness Scheme"
From the year 2005	Scheme of ex-gratia payment scrapping the compassionate appointment scheme
From the year 2014	Old scheme was revived and restored

12.The plea of the Petitioners is that the Postal Department is following the scheme of Compassionate Appointment in the year 1998 (modified from time to time) as per the instruction of Nodal Department i.e. DoPT and even now the same Scheme is followed. Also that, it is the case of the Petitioners that there is no change in the Scheme of Compassionate Appointment earlier to 2010 and after 2010.

13.The Learned Counsel for the Petitioners projects an argument that the impugned order of the 2nd Respondent/Tribunal dated 24.06.2016 in O.A.No.1026/2016 is against the Law and contrary to the probabilities of the case.

14.The Learned Counsel for the Petitioners takes a stand that the time limit of three years determined for consideration of Compassionate Appointment cases were withdrawn as per DoPT OM dated 26.07.2012 and it was further clarified in DoPT in OM No.14014/2/2012-Estt(D) dated 30.05.2013, that subject to availability of vacancy and instructions issued from time to time, any application can be considered without any time limit subject to merit of each case and also taking into account of the indigence of the family and fulfilment of eligible

conditions for the post by the applicant for Compassionate Appointment.

15.The Learned Counsel for the Petitioners points out that in GDS Compassionate Appointment cases, the Tribunal had directed the Writ Petitioners/Respondents to reconsider the case of the Applicants and accordingly, their cases are reconsidered as per the existing procedure for Compassionate Appointment in GDS cadre. In the same way, Compassionate Appointment cases relating to Group C cadre are examined as per the existing procedure for Compassionate Appointment i.e. the Scheme of Compassionate Appointment issued in the year 1998 (modified from time to time) and by application of Relative Merit Point System.

16.The Learned Counsel for the Petitioners fairly submits that the case of the 1st Respondent will be considered based on the instruction issued by DoPT dated 20.01.2010 and will be examined on merit along with other cases in the ensuing Circle Relaxation Committee.

17.The Learned Counsel for the Petitioners refers to the decision in MGB Gramin Bank V. Chakrawarti Singh (MANU/SC/0792/2013) wherein at paragraph 13, it is observed and held as under:

"... as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India and Anr. V. Raj Kumar, (2010) 11 SCC 661, this Court held that in such a situation, the case under the new Scheme has to be considered."

18.Continuing further, the Learned Counsel for the Petitioners cites the decision of the Hon'ble Supreme Court in State Bank of India V. Raj Kumar, (2010) 11 SCC 661 at page 664, wherein at paragraph 8, it is observed as follows:

"8.It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that

recruitment to public services should be on the basis of merit,

by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employment under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant."

19. It is to be pointed out that the term 'Compassionate' denotes a pity feeling for the suffering of other person and an innate desire to shower mercy or to lend assistance. A 'Compassionate Appointment' is an exception to general rule and ordinarily recruitment to public services ought to be on the basis of merit, by open invitation by affording adequate/equal opportunity to all eligible persons to take part in the Selection Process. The purpose of Compassionate Appointment is to deliver Social Justice. A Compassionate Appointment is to be made in accordance with the Scheme governing such appointment and against existing vacancies.

20. No wonder, the object of 'Compassionate Appointment' is not to provide a member of the deceased family, the post much less a post for the post occupied by the deceased. Further, mere death of an Employee in harness does not entitle his family to such source of livelihood. It is incumbent on the part of any public authority or the concerned Government to examine the financial condition of the family of the deceased and only after

arriving at a subjective satisfaction that but for the provision of employment, the family will not be in a position to meet out the crisis that a job is offered to the eligible member of the family.

21. It is brought to the notice of this Court on behalf of the Petitioners that the Government of India, Ministry of Communication and IT Department of Posts, New Delhi, in Ref.No.37-36/2004-SPB-I/C, dated 20.01.2010 had issued a communication addressed to All Heads of Postal Circles, All Directors/Dy.Directors of Accounts(P) etc. on the subject of 'Scheme for Compassionate Appointment-Relative Merit Points and Procedure for selection' whereby and whereunder, the Department has worked out a system of allocation of points to various attributes based on a hundred point-scale as indicated in the tables mentioned. In this connection, the point of view of the Petitioners is that this system of weightage not only awards objectivity to the entire method but also ensures complete transparency and uniformity in the selection process.

22. In so far as the present case is concerned, the 1st Respondent/Applicant's father died while in service on 15.02.2001 and that the 1st Respondent's mother viz., Rudhrayani Thankachi made a representation addressed to the Chief Post Master General, Tamil Nadu Circle, seeking Compassionate Appointment to her younger son viz., the 1st Respondent and further that, the fact of the matter is that the 1st Respondent also made a representation on 29.05.2001 seeking Compassionate Appointment on the ground of Indigent Family Condition and the 2nd Respondent on 15.06.2012 had passed an order rejecting his request for Compassionate Appointment observing that his case is less indigent as per Relative Merit Point on the recommendation made by the Circle Relaxation Committee. Even the second representation made by the 1st Respondent in respect of Compassionate Appointment during 2015, the Committee by means of an order dated 29.09.2015 had rejected the request on the ground that his case is less indigent as per Relative Merit Points.

23. Be that as it may, notwithstanding the fact that the 1st Respondent/Applicant's mother had made a representation in 2001 claiming Compassionate Appointment for her younger son viz., the 1st Respondent/Applicant and that being a cementing platform for arising of a cause of action for Compassionate Appointment and that the case of the 1st Respondent, along with other 875 applications for Compassionate Appointment, was examined by application of Relative Merit Point as per Directorate's Communication dated 20.01.2010 and his case was not considered by the Circle Relaxation Committee for the year 2015 owing to the reason of non-availability of Direct Recruitment Vacancy in the respective cadre under RRR quota and the case is less

indigent as per Relative Merit Points under RRR quota and added further, the Relative Merit Point of the 1st Respondent was assessed at 35 and he being not recommended by the Circle Relaxation Committee as less indigent and for want of 5% Direct Recruitment vacancies, this Court comes to an inescapable conclusion that the 1st Respondent has no vested right to claim Compassionate Appointment as per Scheme that was in force viz., when his application was actually considered. To put it succinctly, the application of the 1st Respondent's mother or his application is to be dealt with in accordance with the Rules prevailing on the date of the disposal of the application/representation, notwithstanding the delay that had occurred owing to variety of reasons. Furthermore, it must be borne in mind that the Compassionate Appointment is only a concession and an exception to the General Rule and an Employer is entitled to vary or wind up the Scheme based on His/its Policies, Availability of posts and financial capacity etc.

24.It may not be out of place for this Court to make a pertinent mention that the 1st Respondent in Law has only a right to be considered for an appointment against a specified quota even if satisfies all the eligible criteria. It may be that he is to wait in the queue for a vacancy to arise, or for an appropriate Committee to assess the comparative need of many number of applicants so as to fill up a limited number of earmarked vacancies.

25.It appears that the 2nd Respondent/Tribunal had disposed of the O.A.No.1026 of 2016 filed by the 1st Respondent based on the reason that the details concerning the Merit Points awarded were not furnished in the communications contained in Annexure A8 and A9, without going into the substantive merit and issued the direction to consider the candidature of the 1st Respondent by applying the then existing Scheme for giving compassionate appointment as on the date of the death of the father of the 1st Respondent/Applicant in the year 2001 and accordingly, processed the matter and communicated the result to the 1st Respondent/Applicant by a speaking order within a period of three months from the receipt of copy of this order, which in the considered opinion of this Court, is not a valid and correct one, in the eye of Law because of the reason that the filing of the application or submitting a representation by the concerned person when the Scheme was in force would not by itself create any vested right in favour of the 1st Respondent. On the other hand, only the Scheme/Policy which is prevailing/existence on the date of grant to be taken into account and not the one which existed/was in force at the time when the application for Compassionate Appointment was made. Viewed in that perspective, the impugned order dated 24.06.2016 passed by the 2nd Respondent is set aside by this Court to prevent an aberration of Justice

and to promote substantial cause of Justice. Consequently, the Writ Petition succeeds.

26. In fine, the Writ Petition is allowed. The order dated 24.06.2016 in O.A.No.310/01026/2016 is hereby set aside by this Court for the reasons assigned by this Court in this Writ Petition.

27. Before parting with the case, this Court points out that in view of the averments made by the 2nd Petitioner that the case of the 1st Respondent will be considered based on the instruction issued by DoPT dated 20.01.2010 and will be examined on merit along with other cases in the ensuing Circle Relaxation Committee, at this stage, this Court, without expressing any opinion on the merits of the matter one way or other, to advance the cause of Justice, simpliciter, directs the Petitioners, based on Equity, Fair Play, Good Conscience and even as a matter of prudent course of action, to consider the case of the 1st Respondent in the teeth of instructions issued by DoPT dated 20.01.2010, of course on merits in the Circle Relaxation Committee to be convened at the earliest point of time by the Petitioners without any further loss of time [by considering a primordial fact that the Representation/Application of the 1st Respondent's mother seeking for Compassionate Appointment and the subsequent Application made by the 1st Respondent on 29.05.2001 - nearly 18 years have rolled by] and the said Committee is directed to pass a reasoned speaking order in a fair, just, unbiased and dispassionate manner, untrammelled and uninfluenced with any of the observations made by this Court in the instant Writ Petition.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Sgl

To

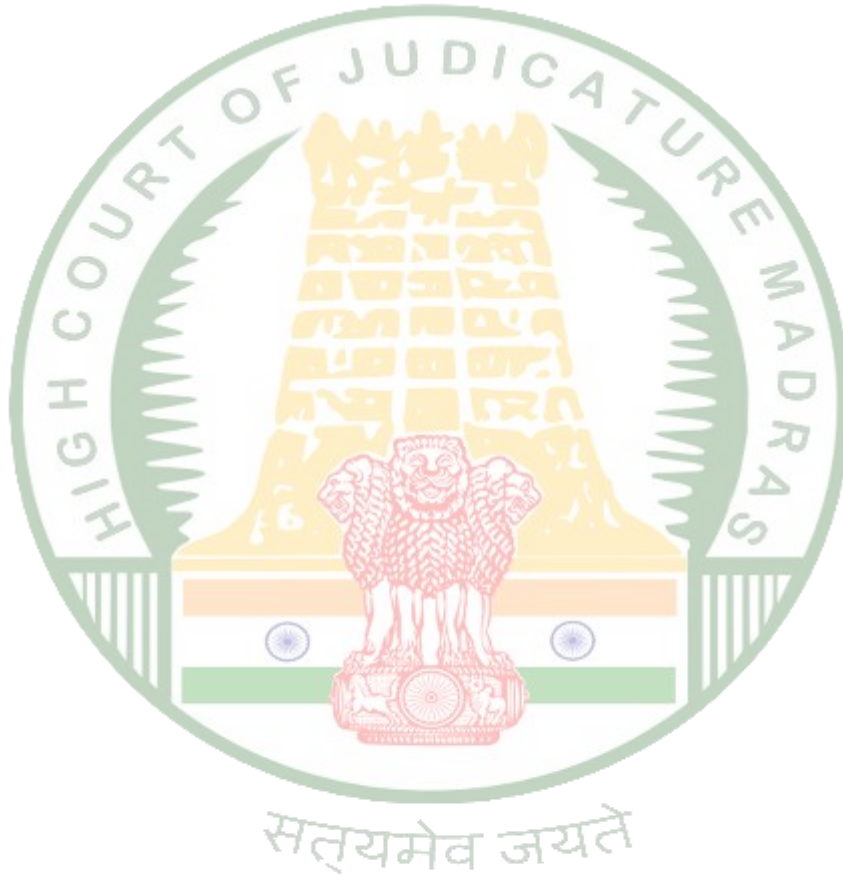
1. The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.
2. The Chief Post Master General,
Union of India,
Tamil Nadu Circle, Chennai - 600 002.

3.The Senior Superintendent of Post Offices,
Kanniyakumari Division,
Nagercoil - 629 001.

+1 cc to M/s.Dr.D.Simon, Advocate, Sr.No. 39872

ORDER in
W.P.No.17332 of 2017

RSI (CO)
CSL/04.06.2019



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