

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM:

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

W.A. No. 2606 of 2018

B. Radhika

... Appellant/Petitioner

-vs-

1. The Executive Director,
Airports Authority of India,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi - 110 003.

2. The Regional Executive Director,
Airports Authority of India,
Southern Region,
Chennai - 600 027.

... Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 13.11.2017 in W.P. No. 29816 of 2013.

W.P.29816/2013:

Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to take appropriate action for appointing the petitioner on compassionate grounds based on the inclusion of his name in the list enclosed with the order issued by the first respondent in F.Na.A-12012/ 35/2008- EM/EAC dated 28.4.2010

For Appellant : Mr. P. Manoj Kumar
For Respondents: Mr. R. Parthiban

J U D G M E N T

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

The husband of the Appellant, viz., B. Balaji, who was working as Office Assistant in Airports Authority of India, Southern region, Chennai, died in harness on 30.08.2007 leaving

behind his wife, who is the Appellant herein and was then aged 26 years, and their daughter, who was then aged 3 years. Claiming that the family of the deceased was in indignant circumstances, the Appellant made application for compassionate appointment to the Respondents on 03.03.2008. In the proceedings No. A-12012/3/2008-EM/EAC dated 28.04.2010 issued by the First Respondent, it had been stated that the competent authority had approved the employment assistance to the persons as per the enclosed list, which included the name of the Appellant at serial No. 28 in Non-Metro Division. However, according to the Appellant, no appointment order was issued in pursuance of the same and the Appellant made representation dated 20.03.2013 to the Second Respondent for taking necessary action in that regard. As there was no response for the same, the Appellant filed W.P. No. 29816 of 2013 in this Court seeking a direction to take action for appointing the Appellant on compassionate grounds based on the inclusion of her name in the list enclosed in the proceedings No. A-12012/3/2008-EM/EAC dated 28.04.2010 issued by the First Respondent.

2. The Learned Judge, who heard the Writ Petition, by order dated 13.11.2017, after elaborately referring to the object of appointment on compassionate grounds to tide over the sudden crisis in the family caused due to the death of the breadwinner as repeatedly emphasized by the Hon'ble Supreme Court of India in various cases, dismissed the Writ Petition. Aggrieved thereby, the intra-Court appeal has been preferred.

3. We have heard Mr. P. Manoj Kumar, Learned Counsel appearing for the Appellant, Mr. R. Parthiban, Learned Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

4. The Learned Counsel for the Appellant strenuously urged that when the Respondents did not reject the request of the Appellant for compassionate appointment and had included her name in the proceedings No. A-12012/3/2008-EM/EAC dated 28.04.2010 issued by the First Respondent, the Writ Court erred in holding that the Appellant was not entitled to compassionate appointment and dismissing the Writ Petition, and has sought for the intervention of this Court.

5. The Learned Counsel for the Respondents has brought to the notice of this Court that though the First Respondent by proceedings No. A-12012/3/2008-EM/EAC dated 28.04.2010, had included the name of the Appellant for appointment on compassionate grounds, the same had been cancelled because the Indira Gandhi International Airport and the Mumbai Airport were handed over to Joint Venture Companies and as a result, a large number of employees had been reverted back to the Airports Authority of India and in compliance of the orders of High Court

of Delhi, it had to be ensured that all such employees were gainfully employed at other establishments of the Airports Authority of India. It is further informed that by circular No. 9 of 2018 dated 22.03.2018, the First Respondent referring to the decision of the Hon'ble Supreme Court of India in Union of India -vs- Shashank Goswami [(2012) 11 SCC 207] in which restricting the benefit of compassionate appointment to the dependents of the deceased employees, in which the aggregate terminal benefits of the family does not exceed Rs.3,00,000/- has been upheld, has communicated the decision of the Board of Directors of the Airports Authority of India at their 178th meeting in which after detailed deliberation taking into consideration the the Social Security Schemes/compensation paid to the dependents of the deceased employees in the Airports Authority of India are quite sufficient to meet their family needs, it was resolved to discontinue compassionate appointment with immediate effect and that necessary amendment had been made in the guidelines except in cases where judicial orders have attained finality till that date. In short, the contention is that there was virtually a ban on fresh recruitment including appointment on compassionate grounds in the Airports Authority of India and in such circumstances, it was not possible for the Respondents to offer any employment to the Appellant, and had sought for dismissal of this Writ Appeal.

6. The Hon'ble Supreme Court of India in Umesh Kumar Nagpal -vs- State of Haryana [(1994) 4 SCC 138], has succinctly stated the principles relating to compassionate appointment 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."

The Hon'ble Supreme Court of India in Himachal Road Transport Corporation -vs- Dinesh Kumar [(1996) 4 SCC 560], has held as follows:-

"10.In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the

particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post. We are of the view that directions given by the Administrative Tribunal, in these two appeals, are totally unauthorised and illegal. We are, therefore, constrained to set aside the orders appealed against. We hereby do so and allow the appeals. There shall be no order as to costs."

Reiterating the same view in *Hindustan Aeronautics Ltd. -vs- A. Radhika Thirumalai* [(1996) 6 SCC 394], it has been held that when the ban on fresh recruitment was in force, it would not be possible to issue any direction for consideration for compassionate appointment. In *State Bank of India -vs- Raj Kumar* [(2010) 11 SCC 661], it has been ruled as follows:-

"11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.

12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be

considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts."

It would also be useful to refer to the observations made by the Hon'ble Supreme Court of India in Manoj Manu -vs- Union of India [(2013) 12 SCC 171], which reads as follows:-

"12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once it is found that the decision of the Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies."

On a conspectus of the legal principles extracted from the aforesaid binding judicial decisions governing the subject, we are of the considered view that the cogent reasons assigned by the Respondents in the submission made by their Learned Counsel for declining compassionate appointment to the Appellant, despite having included her name in the list of candidates for such appointment in the proceedings No. A-12012/3/2008-EM/EAC dated 28.04.2010 of the First Respondent, are absolutely justified and deserve acceptance. The decision making process of the Respondent does not suffer from any infirmity warranting interference of this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.

7. In the upshot, we do not find any merits in this Writ Appeal and we dismiss the same. No costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

1. The Executive Director,
Airports Authority of India,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi - 110 003.

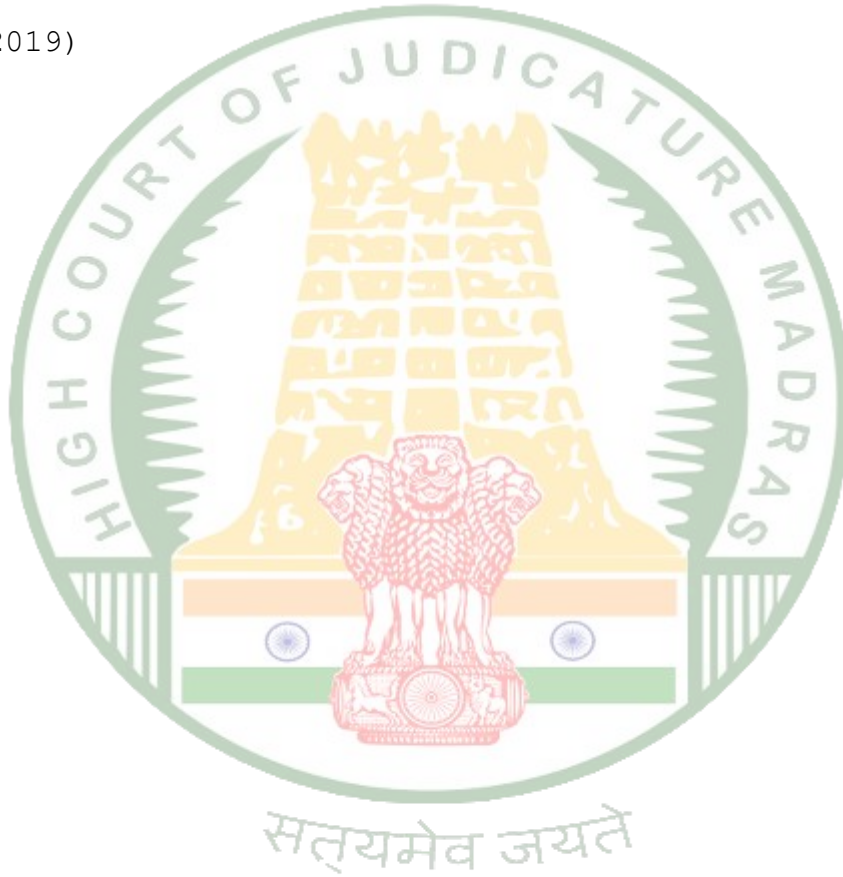
2. The Regional Executive Director,
Airports Authority of India,
Souther Region,
Chennai - 600 027.

+1 CC to Mr.R.Parthiban, Advocate sr 32106.

+1 CC to Mr.P.Rajendran, Advocate sr 32168.

W.A. No. 2606 of 2018

AD(CO)
SP(11/04/2019)



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