

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-04-2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27633 of 2018

And

W.M.P.No.32175 of 2018

V.Swathi

... Petitioner

Vs.

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai-600 009.

2.The Director of Rural Development and
Panchayat Raj,
Saidapet,
Chennai-600 015.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for all connected records in the impugned portions in respect of para 3 of G.O.Ms.No.102, RD&PR (E5) dated 13.7.2015 and to quash, consequently to give effect that order to take retrospectively without any restriction / discrimination to the petitioner or to any person who seeks for appointment on compassionate grounds.

For Petitioner : Mr.A.L.Namasivayam

For Respondents: Mr.R.S.Selvam,
Government Advocate.

O R D E R

The Government Order issued in G.O.Ms.No.102, Rural Development and Panchayat Raj (E5) Department, dated 13.7.2015, is under challenge in the present writ petition.

2. The grievance of the writ petitioner is that her father late Shri N.Vasudevan was employed as a Writer (Clerk) in Vasishtapuram Panchayat, Veppur Panchayat Union and died on 29.5.2015, while he was in service.

3. The learned counsel for the writ petitioner made a submission that the father of the writ petitioner was served for about 17 years with clean records of service and he belongs to Scheduled Caste Community. The writ petitioner submitted an application, seeking an appointment on compassionate grounds. The said application was rejected on the ground that the very policy of the scheme of compassionate appointment was introduced by the Government as far as the legal heirs of the deceased Panchayat Secretaries in the Village Panchayats are concerned in G.O.Ms.No.102, Rural Development and Panchayat Raj (E5) Department, dated 13.7.2015. In view of the fact that the Government Order was passed prospectively, so as to extend the benefit of the scheme to the Government employees who died in harness while in service, after the date of issue of the Government Order dated 13.7.2015.

4. The learned counsel for the writ petitioner states that the case of the writ petitioner ought to have been considered as a special case and the Government has got powers to relax the condition stipulated in the abovesaid Government Order.

5. This Court is of the firm opinion that if a rule of relaxation is invoked in a routine manner it will amount to neutralizing and degrading the recruitment rules in force. A striking balance in between has to be adopted while exercising the powers of relaxation by the Competent Authorities. The process of recruitment and appointment shall be made only by following the recruitment rules in fore. In other words all appointments are to be made strictly by adhering the recruitment rules in force. Thus, the rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused to a particular case. Thus, the relaxation cannot be claimed as a matter of right by the candidates.

6. Rule of relaxation is a discretion granted to the Government and such a discretionary power has to be exercised judiciously and not in a routine manner. Relaxation being a discretionary power has to be exercised by the competent authorities by applying the facts in a particular case and not in a mechanical way to grant certain service benefits to the similarly placed persons. Granting relaxation in one case by the Government cannot be cited as a precedent in other cases. In view of the fact that the relaxation is an exception and cannot be followed in a routine affair. Thus, this Court is of the firm view that all the appointments and regularizations are to be made only by following the recruitment rules in

force strictly and no relaxation can be granted by citing other cases and the Government also to be cautious while exercising the powers of relaxation under Rule 48 in certain cases.

7. The consequences of exercising the power of relaxation under Rule 48 in a routine manner will affect the right of the employees who were appointed regularly in accordance with the recruitment rules in force. In other words, there are large number of employees who are working in the Departments, were fully qualified and who were appointed in accordance with the recruitment and service rules in force. Any relaxation granted under Rule 48 should not have an impact of depriving those candidates, who were appointed regularly in accordance with the rules in force, specifically in the matter of promotions. This being the principles to be followed, while exercising the powers of relaxation, this Court is of the opinion that the policy introduced in G.O.Ms.No.102, dated 13.7.2015 is to be implemented strictly with reference to the terms and conditions stipulated therein.

8. This Court is of the opinion that consideration for appointment on compassionate ground is to be construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore does not create a vested right in favour of the claimant. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. A compassionate appointment is justified when it is granted to provide immediate succor to the deceased employee. Mere death of a Government employee in his harness, it 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 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 of the deceased employee.

9. In the present case on hand, the contention raised by the learned counsel for the writ petitioner is that the father of the writ petitioner died on 29.5.2015 and after two months from the date of death of the deceased employee, the scheme of compassionate appointment has been implemented. On account of the fraction of two months, the benefit of compassionate appointment is unable to be extended to the legal heirs of the deceased employee. May be in an unfortunate situation, where the deceased employee died two months prior to the implementation of the scheme.

10. However, in the matter of providing public employment, Courts can never show any misplaced sympathy establishing the fact that constitutional rights of all others

who all are waiting to secure public employments by participating in the open competitive process. Leniency or misplaced sympathy cannot be granted to secure public employments only the Courts can follow the same.

11. In the present case on hand, the Government Order, which is impugned in the writ petition states that the order shall take effect from the date of issuance of the order. The said order states that the Government has taken a policy decision to sanction compassionate appointment to the legal heirs of the Panchayat Secretaries died while in service and are eligible to be appointed as Night Watchman, Office Assistant, Record Clerk and Junior Assistant according to the prescribed educational qualifications and to the post of Junior Assistant as per Tamil Nadu Ministerial Service Rules, subject to fulfilment of the conditions laid down by the Government under the Recruitment Rules in force.

12. The reasons stated by the writ petitioner that the scope of the Government Order should be enlarged by granting retrospective effect or the case of the writ petitioner is to be considered as a special case, deserves no merit consideration. Such an exercise of interference of the policy decision of the Government can never be undertaken by the High Courts. In normal circumstances, the policy of the Government has to be implemented. In the event of not establishing any unconstitutionality or other illegality, the High Courts would not interfere with the policy decision taken by the Government in this regard. When the scope of compassionate appointment itself is in consonance with the scheme of public posts, this Court would not consider the case of the writ petitioner by expanding the scope of the Government Order by giving retrospective effect to treat the case of the writ petitioner as a special case. In the event of expanding such a benefit, the same will set a wrong precedent and it will provide scope for all other similarly placed persons either to approach the authorities or to approach the Court of Law.

13. Thus, this Court is not inclined to consider the case of the writ petitioner, as the writ petitioner is unable to establish any illegality or unconstitutionality or infirmity in respect of the decisions taken by the Government in the order impugned.

14. Accordingly, the writ petition is devoid of merits and the same stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS)

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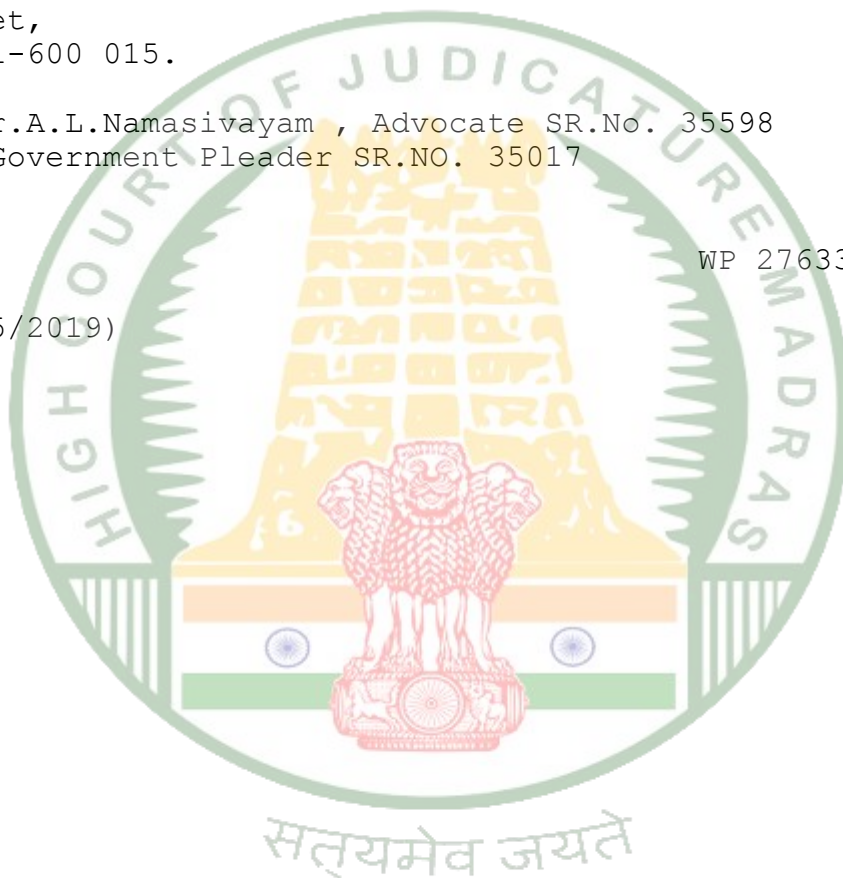
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+1cc to Mr.A.L.Namasivayam , Advocate SR.No. 35598
+1 cc to Government Pleader SR.NO. 35017

ks (CO)
A.SK(08/05/2019)

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