

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.30637 of 2018

R.Suresh

...Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by The Principal Secretary,
Labour and Employment (OP-2-2) Department,
Secretariat, Chennai - 600 009.
2. The Joint Secretary,
Labour and Employment (OP-2-2) Department,
Secretariat, Chennai - 600 009.
3. The Director General of Police,
Police Department, Mylapore,
Chennai - 600 004.
4. The Deputy Inspector General of Police,
Armed Police, Chennai - 600 010.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Mandamus, directing the respondents 1 and 2 to appoint him as Record Clerk in their Department on compassionate grounds by considering his representation dated 17.01.2018.

For Petitioner :Mrs.K.Akhilandeswari

For Respondents : Mr.A.N.Thambidurai,
Spl.Govt Pleader

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents 1 and 2 to to appoint the writ petitioner as Record Clerk in their Department on compassionate grounds by considering his representation dated 17.01.2018.

2. The learned counsel for the writ petitioner states that, the father of the writ petitioner was employed in the Police Department and died while he was in service. The writ petitioner submitted an application seeking appointment on compassionate grounds. His application was forwarded to the District Collector for providing employment in view of the fact that, there was no vacancy available in the Police Department during the relevant point of time. The case of the writ petitioner was considered and he was appointed as Office Assistant on compassionate grounds, in the department of Labour and Employment, in proceeding dated 20.05.2015. The writ petitioner is as of now is continuing in the post of Office Assistant in the department of Labour and Employment.

3. Having not satisfied in the post in which the petitioner is working, he made a representation to the Authorities concerned to appoint him as a Record Clerk in any one of the department on compassionate grounds. The learned counsel for the writ petitioner also states that, the writ petitioner has passed SSLC and therefore, he is fully qualified to hold the post of Record Clerk.

4. This Court is of an opinion that, the compassionate appointment is a special scheme. The scheme of compassionate appointment is got a definite purpose and object. The very object of the scheme is to mitigate the circumstances arising on account of the sudden demise of the Government employee while he was in service. Thus, the scheme of the compassionate appointment is to be provided without lapse of many years.

5. In the present case on hand, admittedly, the case of the writ petitioner was considered by the Competent Authorities and he was appointed as a Office Assistant in the Department of Labour and Employment and now he is continuing in the post of Office Assistant in the regular time scale of pay. Simply because the writ petitioner is qualified and possessing SSLC for appointment to the post of Record Clerk, he cannot claim appointment to the said post on compassionate grounds.

6. Once the writ petitioner has been appointed in any suitable post on compassionate grounds, his right to claim compassionate ground ends with that and he cannot again ask for further appointment on compassionate grounds. All further appointments or promotions are to be secured by the writ petitioner only by way of selection or by way of promotion in accordance with the rules.

7. Undoubtedly, the writ petitioner is entitled to aspiring for higher post. However, he has to secure the higher post only

by participating in the selection process or as per the rules in force for the purpose of getting promotion. Contrarily, the writ petitioner cannot submit the representation to provide an appointment to the higher post on compassionate ground once again. If such claims are entertained, this Court is of an opinion that, the very scheme of compassionate appointment is defeated and the compassionate appointment is provided in any one of the suitable post to mitigate the circumstances, arising on account of the sudden demise of the Government employee.

8. Thus, once the scheme of compassionate appointment is provided to the family of the deceased employee, there is no scope for claiming further appointment to a higher post on compassionate ground and if such a procedure is accepted, then the scheme of compassionate appointment is defeated which would result in denial of right to all other citizens who all are waiting to secure public employment through open competitive process.

9. Compassionate appointment is a concession. Thus, the same cannot be claimed as a matter of right. Equal opportunity in the public employment is the Constitutional mandate. All appointments to the public posts are to be done only under the Constitutional schemes or by following the procedure contemplated. Lakhs and lakhs of youths of our great Nation are burning their midnight lamps and working hard to secure public employment by participating in the open competitive process. Therefore, the Constitutional Courts are bound to protect the Constitutional rights of all those citizen, who all are working hard to secure public employment. In the event of expanding the scope of compassionate appointment, undoubtedly, the Constitutional rights of all those eligible persons and providing of equal opportunity enunciated under the Constitution are infringed.

10. Equality clause enunciating under the Constitution must be followed scrupulously by the Authorities by enlarging the scope of scheme of the compassionate appointment, this Court is of the considered opinion that, the rights of all other citizen who all are eligible for such public employment are deprived of their opportunity even to participate in the process of selection.

11. This being the principles to be followed, the very claim of the writ petitioner for seeking higher post based on the representation is impermissible and cannot be accepted. Admittedly, the writ petitioner had already been appointed as an Office Assistant and if at all, he want to secure higher post, he has to participate in the selection process or he has to get the same by way of promotion as per the rules in force.

12. With these observations, the writ petition stands dismissed. No Costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

Pkn

To

1. The Principal Secretary,
Government of Tamil Nadu,
Labour and Employment (OP-2-2) Department,
Secretariat, Chennai - 600 009.
2. The Joint Secretary,
Labour and Employment (OP-2-2) Department,
Secretariat, Chennai - 600 009.
3. The Director General of Police,
Police Department, Mylapore,
Chennai - 600 004.
4. The Deputy Inspector General of Police,
Armed Police, Chennai - 600 010.

+1cc to Mrs.K.Akhilandeswari, Advocate SR.No.25977

W.P.No. 30637 of 2018

GP (CO)
GMY (10/05/2019)

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