



WEB COPY

W.P.(MD) No.19650/2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.19650 of 2015
and
M.P (MD) No.1 of 2015

N.Nallisayan

... Petitioner

-vs-

1.The Commissioner,
Hindu Religious and Charitable Endowment Board,
Chennai.

2.The Joint Commissioner,
HR & CE,
A/M.Murugan Thirukkoil,
Solaimalai Mandapam,
Azhagarkovil,
Madurai District.

3.The Deputy Commissioner,
Arulmigu Murugan Thiru Kovil,
Solaimalai Mandabam,
Alagarmalai,
Madurai District.

4.The Assistant Commissioner,
Arulmigu Murugan Thiru Kovil,
Solaimalai Mandabam,
Alagarmalai,
Madurai District.

5.The Executive Officer,
Arulmigu Murugan Thiru Kovil,
Solaimalai Mandabam,
Alagarmalai,
Madurai District.

6.The Superintendent HR & CE,
Arulmigu Murugan Thiru Kovil,
Solaimalai Mandabam,
Alagarmalai,
Madurai District.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the sixth respondent in his proceedings in Na.Ka.No.128/2014/A1 dated 12.10.2015 and quash the same as illegal and arbitrary, consequently directing the respondents to give compassionate appointment to the petitioner.

For Petitioner : Mr.R.Sevugaraja

For R1, R2, R4 to R6 : Mr.VR.Shanmuganathan
Special Government Pleader

For R3 : Mr.S.Manohar

O R D E R

The order of rejection, issued in proceedings dated 12.10.2015 rejecting the claim of the writ petitioner for compassionate appointment, is under challenge in the present writ petition.

2. The impugned order, dated 12.10.2015 reveals the fact that the writ petitioner was involved in a criminal case and on verification of his character and antecedents, the authorities competent found that he is not suitable for appointment in a Temple. Thus, the claim of the writ petitioner for compassionate appointment was rejected.

3.The learned counsel appearing on behalf of the writ petitioner states that the father of the writ petitioner Shri.P.Nalli was employed in Arulmigu Murugan Thirukovil, Solaimalai Mandabam, Alagarmalai and died on 26.10.2011 while he was working. On account of the sudden demise of the father of the writ petitioner, the petitioner submitted an application seeking appointment on compassionate ground. However, on account of the pendency of the criminal case, the authorities competent verified the character antecedents of the writ petitioner and arrived a conclusion that he is not suitable for appointment in a Temple. The writ petitioner states that the criminal case ended with an order of acquittal. The criminal case was filed by none other than the wife of the writ petitioner for Harassment of women Act and subsequently, he was acquitted from the criminal charges.

4. This Court is of the considered opinion that mere acquittal in a criminal case would not confer any right on the candidate to seek appointment on compassionate ground. Appointments are to be made strictly in accordance with the recruitment rules in force. Thus, the verification of character and antecedents is the prerogative of the employer concerned and the authorities competent are bound to take a decision in respect of the suitability of



candidate for appointment considering the job profile. These are all criterias to be verified and a decision is to be taken by the competent authorities. However, this Court cannot provide any appointment when a decision is taken by the competent authorities that a particular person is not suitable for appointment in a temple, which is a religious place. This apart, the petitioner is claiming appointment on compassionate ground. Compassionate appointment is a concession. Thus, the appointment on compassionate grounds can never be claimed as a matter of right. The scheme being a special one is to be implemented in respect of temple employees are all paramount importance. In this regard, it is relevant to cite the decision of the Full Bench of the Supreme Court of India in the case of **State of Madhya Pradesh and others vs. Abhijit Singh Pawar reported in 2018(6) CTC 659** held as follows:

"15. In the present case, as on the date when the Respondent had applied, a Criminal case was pending against him. Compromise was entered into only after an Affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (Supra), specially in Paragraphs 34 & 35 completely concludes the issue. Even after the disclosure is made by a Candidate, the Employer would be well within his rights to consider the antecedents and the suitability of the Candidate. While so considering, the Employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the Candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned Authorities in rejecting the candidature of the Respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the Respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this Appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the Respondent."

5. The Apex Court observed that even even after the disclosure is made by a Candidate, the Employer would be well within his rights to consider the antecedents and the suitability of the Candidate. While so considering, the Employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the Candidate and whether the



acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition. All these aspects are to be considered before considering the candidate for appointment.

6. As far as the compassionate appointments are concerned, the purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death of the deceased Government employee. The father of the writ petitioner died in the year 2011. The writ petitioner got married and living separately with his wife. Now, 8 ½ years lapsed. Thus, an enquiry in respect of the indigent circumstances is also to be considered. It is a pre condition that the indigent circumstances would be established on account of the sudden death of the employee and lapse of time would draw the factual inference that the penurious circumstances arose became vanished. Thus, all these aspects are to be considered by the authorities before extending the benefit of the scheme of compassionate appointment.

7. Compassionate appointment is provided without any selection. Appointments on compassionate ground are provided without assigning any merit of the candidate. No rule of reservation is followed. Thus, the very scheme is in violation of the Article 14 and 16 of the Constitution of India. However, the scheme being implemented for welfare of the families, who all are in distress, the same must be implemented within a reasonable period of time and not after a lapse of somany years. It is not as if one appointment is to be granted to one family. The object of the scheme is not to provide an appointment to the family of the deceased, but to provide an appointment to the family which is in distress and not otherwise. The scheme being a non-statutory one, cannot be extended by the authorities by providing compassionate appointment which is otherwise is in violation of equality clause enunciated. Equal opportunity is a Constitutional mandate of all eligible candidates, who all are aspiring employment, must be provided with an opportunity. Lakh and Lakh of youth of this great Nation are burning their midnight lambs and work hard for securing public employment by participating in the open competitive process. Thus, an opportunity must be provided equally and the special scheme like compassionate appointment must be restricted to the extent possible, so as to minimize the discretion and equality clause as enunciated in the Constitution of India.

8. Under these circumstances, this Court do not find any infirmity in respect of the verification of the character and antecedents of the writ petitioner. However, the writ petitioner is at liberty to participate in the process of recruitment, if any notified, by the respondent and if he is otherwise eligible and qualified.



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9. With these liberty, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

To

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+1 CC to M/s. S. MANOHAR, Advocate (SR-84726[F] dated 30/08/2019)

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JMN(10.09.2019) 5P : 7C