



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 08.08.2019
ORDER PRONOUNCED : 30.08.2019

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THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

W.P. (MD) No.2351 of 2016

P.Selvam

...Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Department of School Education,
Secretariat,
Chennai 600 009.

2.The Director of Elementary Education,
DPI Complex,
College Road,
Chennai - 600 006.

3.The District Collector,
Thoothukudi District,
Thoothukudi.

4.The District Educational Officer,
Kovilpatti,
Thoothukudi District.

5.The District Elementary Educational Officer,
Thoothukudi.

6.The Assistant Elementary Educational Officer,
Ottapidaram,
Thoothukudi District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order made in Muu.Mu.No.1090/A1/2014 dated 08.05.2014 passed by the fourth respondent and quash the same and consequently direct the fourth respondent to permanently appointment the petitioner's daughter Ms.Jeisri under compassionate grounds to any suitable post based on her qualification within a time limit to be fixed by this Court.



For Petitioner :Mr.A.Thirumurthy for
M/s. Victory Associates

For Respondents :Mrs.S.Srimathy
Special Government Pleader

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ORDER

This Writ Petition has been filed to quash the order dated 08.05.2014, passed in Muu.Mu.No.1090/A1/2014 by the fourth respondent and to direct the fourth respondent to appoint the petitioner's daughter, Ms.Jeisri, in any suitable post on compassionate ground.

2.According to the petitioner, his wife, K.Belsi Saradha died on 26.11.2001 leaving behind himself and her three minor children, aged about 13, 11 and 03 years, while she was working as the Headmistress of Panchayat Union Primary School, Ottudanpatti, Ottapidaram Panchayat Union, Thoothukudi District. Thereafter, he made an application to the fifth respondent on 08.07.2002, requesting him to pay the terminal benefits and to grant suitable job on compassionate ground to him. So far, the fifth respondent has sent a reply in Na.Ka.No.530/Aa.1/2002 dated 25.07.2002 by stating that there was a ban on the compassionate appointment.

3.Thereafter, the petitioner made another application to the third respondent on 19.11.2012, requesting him to grant any suitable job to his second daughter, S.Jeisri. In the meantime, the fourth respondent by letter dated 11.12.2012, directed the petitioner to submit the application in a proper manner through the sixth respondent and accordingly, the petitioner submitted the application to the sixth respondent, who in turn, forwarded the compassionate appointment proposal to the fifth respondent, and the said application has also been forwarded to the fifth respondent. Further, as per letter dated 16.12.2013, issued by the fifth respondent, the petitioner submitted the Integrated Certificate dated 21.02.2014, issued by the Thasildar, Ottapidaram and the same has been forwarded by the sixth respondent to the fifth respondent on 21.02.2014, who in turn, forwarded the compassionate appointment proposal to the fourth respondent vide letter dated 24.02.2014. Thereafter, by order dated 08.05.2014, the fourth respondent has rejected the claim of the petitioner stating that the application was not made within three years from the date of death of the petitioner's wife. Challenging the same, the present writ petition has been filed.

4.The learned counsel for the petitioner would submit that at the time of the death of the petitioner's wife, the applicants/children were minors and after attaining their age of



majority, the petitioner submitted the said application dated 19.11.2012, seeking compassionate appointment to her second daughter, S.Jeisri. Therefore, the impugned order dated 08.05.2014, passed in Muu.Mu.No.1090/A1/2014 by the fourth respondent is illegal and arbitrary and hence, the same is liable to be quashed.

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5.The learned Special Government Pleader appearing for the respondents would submit that though the petitioner has submitted his application for employment to him on compassionate ground within a period of one year from the date of death of his wife, he did not re-submit his application after lifting of ban for direct recruitments as per G.O.Ms.No.14, Personnel and Administrative Department dated 07.02.2006. Further, after a lapse of nearly 11 years from the date of death of the petitioner's wife, Belsi Saradha, the petitioner has submitted the application to the third respondent on 19.11.2012, seeking employment on compassionate ground to his second daughter, Jaisri, which is not permissible as per the Government Orders in G.O.No.120, Labour and Employment Department dated 29.09.1995 and there is no provision to propose a second person after proposing a person for employment on compassionate ground. Therefore, the fourth respondent has rightly rejected the claim of the petitioner and there is no error or irregularity in the impugned order dated 08.05.2014, passed in Muu.Mu.No.1090/A1/2014 by the fourth respondent.

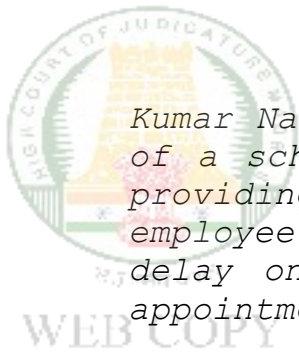
6.Heard the learned counsel on either side and perused the materials available on record.

7.Admittedly, the petitioner made an application on 08.07.2002 and thereafter, filed another application on 19.11.2012 seeking for employment to his second daughter, S.Jeisri, and the same was rejected on 08.05.2014, but no material has been placed before this Court to show that the petitioner has submitted the application under proper format to the respondents. Further, the petitioner submitted the application seeking for employment to his second daughter, S.Jeisri, after a lapse of nearly 11 years and the same is barred by limitation in the light of the Government Orders as well as the decision rendered by the Hon'ble Supreme Court of India in the case of **State of Himachal Pradesh and another vs. Shashi Kumar** reported in **(2019) 3 Supreme Court Cases 652**. The relevant paragraphs of the said decision read as under:

"35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution.

In Umesh

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Kumar Nagpal (*supra*), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including *State of J & K Vs. Sajad Ahmed Mir and Local Administration Department Vs. M. Selvanayagam*.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place."

8. It is also relevant to extract below the following judgments on this aspect:-

(i) In the case of **State of Himachal Pradesh and another Vs. Shashi Kumar** reported in (2019) 3 Supreme Court Cases 653, the Hon'ble Supreme Court has held as follows:-

.....21. The decision in **Govind Prakash Verma (*supra*)** has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in **Umesh Kumar Nagpal Vs. State of Haryana**. The principles which have been laid down in **Umesh Kumar Nagpal (*supra*)** have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

"2. ...As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications 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 4 (1994) 4 SCC 138 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 favorable 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."

22. Specifically in the context of considering the financial circumstances of the family of the deceased employee,

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several judgments of this Court have elaborated on the principles to be followed. **23.** The decision in General Manager (D&PB) Vs. Kunti Tiwary⁵ involved an interpretation of an office memorandum dated 7 August 1996 circulated to all banks in the light of the decision in **Umesh Kumar Nagpal (supra)**. The Indian Banks Association adopted the directions of this Court in the Scheme which was proposed for the appointment of heirs of deceased employees. The Scheme contemplated that in order to determine the financial condition of the family, the following amounts would have to be taken into account:

"7... **(a)** Family pension.

(b) Gratuity amount received.

(c) Employee's/employer's contribution to provident fund.

(d) Any compensation paid by the Bank or its Welfare Fund.

(e) Proceeds of LIC policy and other investments of the deceased employee.

(f) Income of family from other sources.

(g) Employment of other family members.

(h) Size of the family and liabilities, if any, etc." Eventually, this recommendation was accepted in the Scheme. In the light of these recommendations and the Scheme, this Court observed that where the family of a deceased employee was not left without means of livelihood, the claim for compassionate appointment could not be sustained. It may be noted that in that case it was on a review of the overall financial position of the family, including amounts received towards terminal benefits that the decision was taken.

24. The decision of this Court in Punjab National Bank Vs. Ashwani Kumar Taneja⁶ followed the same principle. While reiterating the view which was taken in Kunti Tiwary (supra), this Court held that the Scheme specified the amounts which were required to be taken into consideration.

.....

35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was filed on 8 May 2007. On 15 January 2008 the Additional



Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In **Umesh Kumar Nagpal (supra)**, this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including **State of J&K Vs. Sajad Ahmed Mir¹² and Local Administration Department Vs. M. Selvanayagam¹³**.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place.

38. In the circumstances, we allow the appeal in the following terms:

(i) The Writ Petition (CWP No.3652 of 2015) filed by the respondent before the High Court shall stand dismissed and the direction of the High Court for reconsideration of the application for compassionate appointment shall stand set aside;

(ii) The direction issued by the High Court to the appellants to desist from taking into account the family pension and other terminal benefits is unsustainable in law and is accordingly set aside;

(iii) While we confirm the decision of the State Government to fix income limits in order to satisfy the terms of eligibility for compassionate appointment, we expect that the State Government shall, in compliance with



the Policy, revisit the income limits at intervals of three years or earlier and consider whether a revision is warranted having regard to the cost of living, inflation and other relevant facts and circumstances.,

(ii) In **W.A. (MD) No.329 of 2015**, this Court on 22.04.2016, has held as follows:

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

and

(iii) In the case of **The Govt. of India and another Vs. P.Venkatesh** [Civil Appeal No.2425 of 2019, decided on 01.03.2019], wherein the Hon'ble Apex Court, following its earlier judgment in **Umesh Kumar Nagpal Vs. State of Haryana** reported in **1994 (4) SCC 138**, has held as follows:-

'Bearing in mind the above principles, this Court held:

"6.For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

The recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment. The claim was liable to be rejected on that ground and ought to have been so rejected. The judgment of the High Court is unsustainable.



We accordingly allow the appeal and set aside the impugned judgment and order of the High Court. In consequence, we affirm the judgment of the Tribunal dismissing the Original Application. There shall be no order as to costs.''

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9.Thus, on the facts of the case, the aforesaid decision is squarely applicable to the facts of the present case. Hence, the contention of the petitioner is deserves to be rejected and accordingly, there is no merit in the writ petition to justify with the impugned order dated 08.05.2014, passed in Muu.Mu.No.1090/A1/2014 by the fourth respondent.

10.Accordingly, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

To

- 1.The Secretary to Government,
Department of School Education,
Secretariat, Chennai 600 009.
- 2.The Director of Elementary Education,
DPI Complex,
College Road, Chennai - 600 006.
- 3.The District Collector,
Thoothukudi District, Thoothukudi.
- 4.The District Educational Officer,
Kovilpatti, Thoothukudi District.
- 5.The District Elementary Educational Officer,
Thoothukudi.
- 6.The Assistant Elementary Educational Officer,
Ottapidaram, Thoothukudi District.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-84444[F] dated 30/08/2019)

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30.08.2019

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