

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.09.2020

Pronounced on : 28.10.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal No.881 of 2020

1. The Principal Secretary, Revenue
Department,
Government of Tamil Nadu,
Fort St. George, Chennai.
2. The District Collector,
Tiruvallur District,
Tiruvallur.Appellant/Respondents

Vs

KarunakaranRespondents/Petitioner

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent,
to set aside the order passed by this Court on 27.06.2019 made
in W.P.No.2689 of 2018 and allow the writ Appeal.

Praying for Issuance of a Writ of Certiorarified Mandamus
Calling for the records in Na.Ka.No.A1/21483/17 dated
28/09/2017, passed by the 2nd respondent herein and quash the
same as unsustainable in law and subsequently direct the
respondents to appoint petitioner to the post of Office
Assistant in the office of the 2nd Respondent /Village
Administrative Office on compassionate grounds.

For Appellants : Mr.G.K.Muthukumar,
Spl. Govt. Pleader

For Respondent : Mr.K.Gajendiran

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

The State is in appeal against an order dated 27.06.2019 in
W.P. No.2689 of 2018 whereby a direction was issued to consider
the Respondent/Petitioner's claim for compassionate appointment
sympathetically by granting the necessary age relaxation to the

Respondent/Petitioner in terms of the Government instructions/orders.

2. The Respondent's father worked as a Village Assistant under the jurisdiction of the District Collector, Tiruvallur. While in service, he died on 04.06.2017 due to a cardiac arrest. On 18.09.2017, the Respondent's mother submitted an application for compassionate appointment of her son, i.e. the Respondent/Petitioner herein, to the District Collector. In response to such request, by order dated 26.09.2017, the District Collector informed the Respondent's mother that the Respondent's date of birth is 24.09.1978 and that G.O. (Ms) No.9, Labour and Employment Department dated 19.01.1998 specifies that the maximum age limit for compassionate appointment is 35 years. Consequently, the Respondent's mother was informed that the Respondent is ineligible but that she could instead make the request on behalf of any other eligible legal heirs of the deceased. The writ petition was filed in these facts and circumstances and, as stated above, the writ petition was disposed of by order dated 27.06.2019, which is impugned herein.

3. We heard Mr.Muthukumar, the learned Special Government Pleader for the Appellants/Respondents and Mr.K.Gajendran, the learned counsel for the Respondent/Petitioner.

4. Mr.Muthukumar submitted that the application for compassionate appointment was rejected because the Respondent/Petitioner had crossed the maximum age limit for such appointment as per the applicable norms. In this connection, he referred to the Tamil Nadu Government Servants [Conditions of Service] Act, 2016 (the Conditions of Service Act), which stipulates in Section 15 that the maximum age limit for compassionate appointment is 35 years for sons or unmarried daughters and 50 years for the wife/husband of the Government servant, who died in harness. He also pointed out that Section 15 commences with a non-obstante clause and would therefore override government orders or special rules to the contrary. With regard to the G.O.'s that were cited by the Respondent, he pointed out that those G.O.'s were prior to the Conditions of Service Act and, therefore, would not apply to the present case.

5. In reply, the learned counsel for the Respondent/Petitioner submitted that the date of death of the Respondent's father was 04.06.2017 and the application for compassionate appointment was submitted on 18.09.2017. The only ground on which the Respondent's application rejected was because the Respondent was about 38 years old as of the date of death of his father. As regards age relaxation, he pointed out that there have been several Government Orders relaxing the

upper age limit. In support of this contention, he referred to G.O. Ms. No.9, Labour and Employment Department dated 19.01.1998, which specifies that the upper age limit may be relaxed with regard to persons belonging to the SC/ST community. He also relied upon G.O. Ms. No.18, Labour and Employment Department dated 23.01.2020, which fixes the maximum age limit as 40 years for appointment on compassionate grounds. Thus, he contended that the age limit of 35 years in Section 15 of the Conditions of Service Act 2016 is not sacrosanct and that the Government itself had relaxed the upper age limit both prior to and after the enactment of the Conditions of Service Act.

6. In response to the contention that the age limit may be relaxed especially for SC/ST candidates, the learned Special Government Pleader produced a letter dated 25.09.2020, issued by the Secretary to Government, Personnel and Administrative Reforms (S) Department, to the effect that steps are being taken to amend the Conditions of Service Act in consonance with executive orders issued in G.O.(Ms).No.18 dated 23.01.2020, with effect from 23.01.2020, so as to raise the maximum age limit to 40 years. On this basis, the learned Special Government Pleader submitted that the increase of the maximum age limit to 40 years would become effective only from 23.01.2020. Therefore, the said Government Order and the proposed amendment cannot be applied to the case of the Respondent/Petitioner.

7. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

8. In this case, the undisputed factual position is that the Respondent's father died on 04.06.2017 while in service as a Village Assistant. The Respondent's mother admittedly submitted the application for compassionate appointment on 18.09.2017, which is well within the stipulated three year period. As per the order dated 26.09.2017, it is clear that the only ground on which the application was rejected was that the Respondent exceeded the upper age limit of 35 years prescribed in G.O. Ms. No.9 dated 19.01.1998. The learned counsel for the Respondent/Petitioner relied upon the Letter No.46571/NI/82-3 dated 24.11.1982 which provides for relaxation as regards candidates belonging to the Scheduled Caste/Scheduled Tribe, even if they exceed the age limit prescribed in the Special Rules. However, upon perusal of Section 15 of the Conditions of Service Act, we find that it does not provide for relaxation or exemption to Scheduled Caste/Scheduled Tribe candidates. The said provision is as under:

"15. Notwithstanding anything contained in the Special Rules for various State and Subordinate Services regarding the maximum age limit for appointment by direct recruitment, in

the case of appointment on compassionate grounds, the maximum age limit shall be thirty five years of age in respect of the sons or the unmarried daughters and fifty years of age in respect of the sons or the unmarried daughters and fifty years of age in respect of wife or husband of the Government servant, who died in harness while in service, or retired from service on medical invalidation before attaining the age of fifty three years, as the case may be."

9. It is also pertinent to note that Section 15 opens with a non-obstante clause and, therefore, would prevail over special rules for the State and Subordinate Services, which are to the contrary. As regards G.O. Ms. No.18, dated 23.01.2020, the learned Special Government Pleader relied upon the letter dated 25.09.2020 to point out that the said relaxation would be effective after the Conditions of Service Act is amended and too with effect from 23.01.2020 and not earlier.

10. The law with regard to compassionate appointment has been laid down and reiterated in several judgments, wherein it was held that compassionate appointment is not another method of recruitment but a measure intended to provide immediate succour to the family of the employee who died in harness. Importantly, it should be granted only in compliance with the applicable service rules and conditions as on the date of consideration of the application for compassionate appointment. In order to set out the legal position, instead of citing numerous authorities, it is sufficient to refer to a recent judgment of the Supreme Court in *State of H.P. v. Parkash Chand* (2019) 4 SCC 285, where it was held as under:

"10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to rewrite the terms of the Policy. It is well settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. [Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] , SBI v. Kunti Tiwary [SBI v. Kunti Tiwary, (2004) 7 SCC 271 : 2004 SCC (L&S) 943] , Punjab National Bank v. Ashwini Kumar Taneja [Punjab National Bank v. Ashwini Kumar Taneja, (2004) 7 SCC 265 : 2004 SCC (L&S) 938] , SBI v. Somvir Singh [SBI v. Somvir Singh, (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92] , Mumtaz Yunus Mulani v. State of Maharashtra [Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384 :

(2008) 2 SCC (L&S) 1077] , Union of India v. Shashank Goswami [Union of India v. Shashank Goswami, (2012) 11 SCC 307 : (2013) 1 SCC (L&S) 51] , SBI v. Surya Narain Tripathi [SBI v. Surya Narain Tripathi, (2014) 15 SCC 739 : (2015) 3 SCC (L&S) 689] and Canara Bank v. M. Mahesh Kumar [Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] .]"

The cleavage of opinion on the issue as to whether the scheme prevalent on the date of death or that prevalent on the date of consideration of the application should be applied was considered and resolved by a Full Bench (Three Judges) of the Supreme Court recently in N.C.Santhosh v. State of Karnataka 2020 SCC online SC 279 by holding that the norms prevailing on the date of consideration of the application would apply. Paragraph 25 of the said judgment is as under:

"25. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

In the case at hand, the Respondent's father died on 04.06.2017, the application for compassionate appointment was submitted on 18.09.2017 and the said application was rejected on 26.09.2017. Therefore, the Conditions of Service Act, which came into force on 15.09.2016, and, in particular, Section 15 thereof, which imposes the upper age limit of 35 years, was applicable both on the date of death and the date of consideration of the application. Besides, G.O. (Ms) No.18, Labour and Employment Department dated 23.01.2020, which was issued much later, cannot be applied.

11. The learned single Judge cited orders dated 27.10.2005 and 21.10.2016, respectively, of learned single Judges in W.P. No.744 of 2003 and W.P. No.8831 of 2013, wherein the letter dated 24.11.1982 bearing No.46571/NI/82-3 was relied upon, and a direction was given in respect of the grant of compassionate appointment on that basis. In Chandigarh Administration v. Jagjit Singh (1995) 1 SCC 745, the Supreme Court considered whether the erroneous grant of relief in particular cases would justify the grant of similar relief in subsequent cases so as to avoid discrimination and held as under:

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law – indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the

correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course –barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)"

In a similar vein, in *Basawaraj v. Special Land Acquisition Officer* (2013) 14 SCC 81, it was held as follows:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn. v. Jagjit Singh* [(1995) 1 SCC 745 : AIR 1995 SC 705], *Anand Buttons Ltd. v. State of Haryana* [(2005) 9 SCC 164 : AIR 2005 SC 565], *K.K. Bhalla v. State of M.P.* [(2006) 3 SCC 581 : AIR

2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937] .)"

12. By applying the aforesaid principles, we conclude that the impugned order of the learned single Judge cannot be sustained. However, we note that in the order dated 26.09.2017, which was impugned in the writ petition, it is stated that the Respondent's mother may instead request for appointment of any other eligible legal heirs. Therefore, we make it clear that it is always open to the Respondent's mother to request for compassionate appointment for any other eligible legal heir as indicated therein, and any such application should be considered on merits as per applicable rules.

In the result, subject to the above observations, the Writ Appeal is allowed and the impugned order of the learned Single Judge is set aside.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary,
Revenue Department,
Government of Tamil Nadu,
Fort Saint George, Chennai.

2.The District Collector,
Tiruvallur District,
Tiruvallur.

judgment in

Writ Appeal
No.881 of 2020

RSV(CO)
RV(19/11/2020)

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