



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 28.02.2020
PRONOUNCED ON : 26.11.2020
CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P (MD)No.12143 of 2015

WEB COPY

P.Balasubramanian

.. Petitioner

Vs.

The Manager (P&IR),
Life Insurance Corporation of India,
Divisional Office,
9A Punitha Vathyar Street,
Polayamcottai,
Tirunelveli - 627 002.

.. Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in Ref. P&IR dated 09.08.2014 issued by the respondent and quash the same and consequently direct the respondent to provide appointment to the petitioner on compassionate basis and pass such further or other orders.

For Petitioner

: Mr.R.Karunanidhi

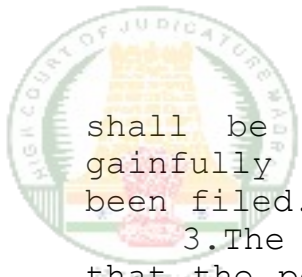
For Respondent

: Mr.G.Prabhu Rajadurai

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus seeking to call for the records in Ref. P&IR dated 09.08.2014 issued by the respondent and quash the same and consequently direct the respondent to provide appointment to the petitioner on compassionate basis.

2.The case of the petitioner is that his father was employed as Record Clerk under the respondent and while in service, he died in harness, on 16.03.2013. His mother made an application to the respondent seeking appointment to the petitioner on compassionate basis. The respondent vide letter dated 07.11.2013, sought the appointment letter issued by the employer to his elder brother, viz., Saravanan and last pay drawn certificate of Saravanan issued by the employer. His elder brother Saravanan was employed in a private company namely Ambattur Clothing Limited from 22.10.2007 and immediately after the death of his father, he was transferred to Magic Clothing Private Limited on 01.04.2013. Since he could not trace his original appointment letter, dated 22.10.2007, they forwarded the transfer order, dated 01.04.2013, alongwith the pay certificate to the respondent. After receipt of the same, the respondent vide impugned order, dated 09.08.2014, rejected the request for compassionate appointment on the ground that his elder brother is gainfully employed and the compassionate appointment



shall be admissible only where none of the family members is gainfully employed. Against which, the present writ petition has been filed.

3.The respondent filed a counter-affidavit *inter-alia* stating that the petitioner's family was provided with all benefits arising in view of the death of his father, who died on 16.03.2013, while in service. On enquiry, it was found that his brother was employed as a senior executive in a private company and was receiving a gross salary of Rs.25,422/- and the petitioner was also working in a private company even prior to the death of his father. For the said reasons, the application seeking compassionate appointment was rejected.

4.The learned counsel appearing for the petitioner submitted that the petitioner's elder brother namely Saravanan has got married one K.Mahalakshmi on 02.09.2011, i.e., even prior to the death of his father and they blessed with a male child on 06.11.2013 and he settled separately at Chennai. He did not extend any support to the petitioner's family. His mother is an aged person and she had undergone several medical treatments. Thus, he prayed to quash the impugned order.

5.The learned counsel appearing for the respondent submitted that the petitioner's family was provided with all benefits arising in view of the death of his father, who died on 16.03.2013, while in service. On enquiry, it was found that his brother was employed as a senior executive in a private company and was receiving a gross salary of Rs.25,422/- and the petitioner was also working in a private company even prior to the death of his father. In Clause 2 Sub Clause III of the Life Insurance Corporation Recruitment Instructions, 1979, it is stated that the relaxation shall be admissible only where none of the members of the family, widow, son and unmarried daughter, is gainfully employed. Therefore, the respondent has rightly rejected the application for compassionate appointment and the same requires no interference.

6.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

7.The only ground on which the respondent has denied the appointment on compassionate grounds is that the petitioner's elder brother is working in a private company and therefore, as per the rules, if a family member is gainfully employed, then the other family member is not entitled for compassionate appointment. It is equally admitted fact that the elder brother of the petitioner is married even before the death of the petitioner's father and settled separately in Chennai which had been disclosed by the petitioner by producing salary certificate and he has not been financially supporting the family of the petitioner. This aspect has not been considered by the authorities. The petitioner would rely on the judgment in **Govind Prakash Verma vs. Life Insurance Corporation of**



India and others reported in **(2005) 10 SCC 289**, wherein, the Hon'ble Supreme Court at paragraph 6 has held as follows:-

"The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account."

8. The petitioner would also rely on the decision of this Court in **W.P(MD)No.1278 of 2018 decided on 21.02.2018 (M.Suresh vs. The Additional Director General of Police, Prison Department, Chennai and Superintendent of Police, Chennai)**, wherein at paragraphs 4 to 6, it has been held as follows:-

"4. The learned counsel appearing for the petitioner drew the attention of this Court to G.O.(Ms).No.155, Labour and Employment Department, dated 16.07.1998, wherein the paragraph No.3, it has been stated as follows:-

"3. In regard to the second condition mentioned in Para 1 above, it is considered that if a member of the family is already in employment and supports the family then the restriction may be applied. When a dependant of the family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family and is actually supporting the family. If that person was employed even before the death of the Government Servant and was living separately without extending any



help to the family, then the case of other eligible dependants will be considered."

5.In this case, it has been demonstrated that the petitioner's brother got employment even before the death of the petitioner's father. Therefore, the ground on which the impugned order of rejection rests is clearly unsustainable in law. The order impugned in the Writ Petition stands quashed.

6.Therefore, the respondents are directed to consider the case of the petitioner on compassionate grounds and pass appropriate orders afresh in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.'

9.In my considered opinion, the above judgments are squarely applicable to the present facts and circumstances of the case and therefore, I am inclined to interfere with the impugned order. Accordingly, the impugned order dated 09.08.2014 issued by the respondent is set aside and the respondent is directed to provide appointment to the petitioner on compassionate basis within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

bala/smn

To

The Manager (P&IR),
Life Insurance Corporation of India,
Divisional Office,
9A Punitha Vathyar Street,
Polayamcottai,
Tirunelveli - 627 002.

+1 CC to Mr.G. PRABHU RAJADURAI, Advocate (SR-23174[F] dated 27/11/2020)

ORDER MADE IN
W.P (MD) No.12143 of 2015
DATED : 26.11.2020

VB (03.12.2020) 4P 3C