



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.23304 of 2015

Karuppayee Natchiyar

... Petitioner

-Vs-

1.The District Collector,
Madurai District,
Madurai.

2.The Assistant Director of Panchayat,
Madurai District, Madurai.

3.The Personnel Assistant to
District Collector (Development),
O/o.Madurai District Collector,
Madurai Collectorate, Madurai.

4.The Block Development Officer (Village Panchayat)
T.Kallupatti Panchayat Union,
T.Kallupatti, Madurai District.

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Na.Ka.No.1550/15/01 dated 09.11.2015 but signed on 09.11.2015 passed by the fourth respondent and quash the same and consequently direct the respondents to appoint the petitioner at any suitable post under compassionate grounds.

For Petitioner

: Mr.K.Viralinathan

For Respondents

: Mr.P.Mahendran

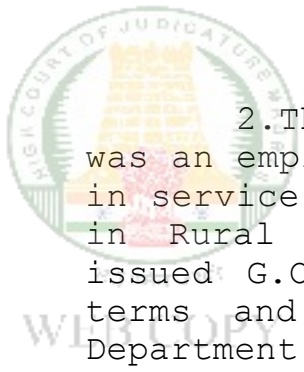
Additional Government Pleader
for R1 to R3

Mr.M.Rajarajan

Additional Government Pleader
for R4

ORDER

The order of rejection rejecting the claim of writ petitioner for compassionate appointment is under challenge in the writ petition.



2.The petitioner is the wife of Late.Mr.G.Murugesan, who was an employee working in the cadre of Village Secretary and died in service on 13.05.2015. As far as the compassionate appointment in Rural Development Department is concerned, the Government issued G.O.(Ms).No102, dated 13.07.2015 with reference to the terms and conditions as applicable to the Rural Development Department for compassionate appointment. This Court elaborately adjudicated the issue in the case of **V.Swathi Vs The Principal Secretary, Rural Development and Panchayat Raj Department** and delivered a judgment on 09.04.2019 in W.P.No.27633 of 2018 and the relevant paragraphs are extracted hereunder:-

"5. This Court is of the firm opinion that if a rule of relaxation is invoked in a routine manner it will amount to neutralizing and degrading the recruitment rules in force. A striking balance in between has to be adopted while exercising the powers of relaxation by the Competent Authorities. The process of recruitment and appointment shall be made only by following the recruitment rules in force. In other words all appointments are to be made strictly by adhering the recruitment rules in force. Thus, the rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused to a particular case. Thus, the relaxation cannot be claimed as a matter of right by the candidates.

6. Rule of relaxation is a discretion granted to the Government and such a discretionary power has to be exercised <http://www.judis.nic.in> judiciously and not in a routine manner. Relaxation being a discretionary power has to be exercised by the competent authorities by applying the facts in a particular case and not in a mechanical way to grant certain service benefits to the similarly placed persons. Granting relaxation in one case by the Government cannot be cited as a precedent in other cases. In view of the fact that the relaxation is an exception and cannot be followed in a routine affair. Thus, this Court is of the firm view that all the appointments and regularizations are to be made only by following the recruitment rules in force strictly and no relaxation can be granted by citing other cases and the Government also to be cautious while exercising the powers of relaxation under Rule 48 in certain



7. The consequences of exercising the power of relaxation under Rule 48 in a routine manner will affect the right of the employees who were appointed regularly in accordance with the recruitment rules in force. In other words, there are large number of employees who are working in the Departments, were fully qualified and who were appointed in accordance with the recruitment and service rules in force. Any relaxation granted under Rule 48 should not have an impact of depriving those candidates, who were appointed regularly in accordance with the rules in force, specifically in the matter of promotions. This being the principles to be followed, while exercising the powers of relaxation, this Court is of the opinion that the policy introduced in G.O.Ms.No.102, dated <http://www.judis.nic.in> 13.7.2015 is to be implemented strictly with reference to the terms and conditions stipulated therein.

8. This Court is of the opinion that consideration for appointment on compassionate ground is to be construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore does not create a vested right in favour of the claimant. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. A compassionate appointment is justified when it is granted to provide immediate succor to the deceased employee. Mere death of a Government employee in his harness, it does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and only if it is satisfied that without providing 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 of the deceased employee.

9. In the present case on hand, the contention raised by the learned counsel for the writ petitioner is that the father of the writ petitioner died on 29.5.2015 and after two months from the date of death of the deceased employee,



the scheme of compassionate appointment <http://www.judis.nic.in> has been implemented. On account of the fraction of two months, the benefit of compassionate appointment is unable to be extended to the legal heirs of the deceased employee. May be in an unfortunate situation, where the deceased employee died two months prior to the implementation of the scheme.

10. However, in the matter of providing public employment, Courts can never show any misplaced sympathy establishing the fact that constitutional rights of all others who all are waiting to secure public employments by participating in the open competitive process. Leniency or misplaced sympathy cannot be granted to secure public employments only the Courts can follow the same.

11. In the present case on hand, the Government Order, which is impugned in the writ petition states that the order shall take effect from the date of issuance of the order. The said order states that the Government has taken a policy decision to sanction compassionate appointment to the legal heirs of the Panchayat Secretaries died while in service and are eligible to be appointed as Night Watchman, Office Assistant, Record Clerk and Junior Assistant according to the prescribed educational qualifications and to the post of Junior Assistant as per Tamil Nadu Ministerial Service Rules, subject to fulfilment of the conditions laid down by the Government under the Recruitment Rules in force.

12. The reasons stated by the writ petitioner that the scope of the Government Order should be enlarged by granting retrospective effect or the case of the writ petitioner is to be considered as a special case, deserves no merit consideration. Such an exercise of interference of the policy decision of the Government can never be undertaken by the High Courts. In normal circumstances, the policy of the Government has to be implemented. In the event of not establishing any unconstitutionality or other illegality, the High Courts would not interfere with the policy decision taken by the Government in this regard. When the scope of compassionate appointment itself is in consonance with the scheme of public posts, this



Court would not consider the case of the writ petitioner by expanding the scope of the Government Order by giving retrospective effect to treat the case of the writ petitioner as a special case. In the event of expanding such a benefit, the same will set a wrong precedent and it will provide scope for all other similarly placed persons either to approach the authorities or to approach the Court of Law.

13. Thus, this Court is not inclined to consider the case of the writ petitioner, as the writ petitioner is unable to establish any illegality or unconstitutionality or infirmity in respect of the decisions taken by the Government in the order impugned."

3.The above judgment was confirmed by the Hon'ble Division Bench of this Court in W.A.No.2929 of 2019, dated 04.09.2019. In view of the fact that the principle regarding the appointment on compassionate ground is settled as far as the Rural Development is concerned, no further consideration is required in this writ petition. Accordingly, the Writ Petition stands dismissed. No cost.

Sd/-

Assistant Registrar (RTI)

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Sub Assistant Registrar(CS)

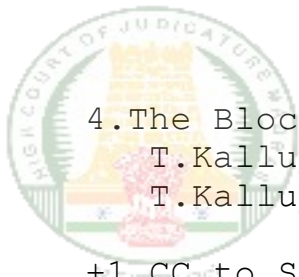
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T.Kallupatti Panchayat Union,
T.Kallupatti, Madurai District.

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