



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD)No.81 of 2017

and

C.M.P. (MD)No.755 of 2017

Against WP(MD)No.11703 of 2013

1. The Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation, (NSSO)
Field Operation Division,
Room No.412, 4th floor, S.P.Bawan,
New Delhi - 110 001.
 2. The Deputy Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation, (NSSO)
Field Operation Division,
East Block, 6 R.K.Puram,
New Delhi - 110 001.
 3. The Deputy Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation, (NSSO) (FOD)
Regional Office, T.N (West),
No.13, Senkupta Street, Ramnagar,
Coimbatore - 641 009.
 4. The Assistant Director,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation, (NSSO) (FOD)
1st Main Road, Ramalinga Nagar, Woraiyur,
Thiruchirappalli - 620 003.
- ... Appellant/
Respondents 1-4
- Vs.
- R.Kumaran
- ... Respondent/Writ
Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.11703 of 2013 dated 28.09.2016.

Prayer in WP(MD)No.11703 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the Respondents No-1 and 2 to grant permission for conducting Sports Meet and its connecting event at Manthai Pottal, Melur, Avvayar Street, Madurai District on 29.01.2013 or any other appropriate date.



For Appellants : Mrs.L.Victoria Gowri
For Respondent : Mrs.M.Rajeshwari
for Mr.N.R.Murugesan

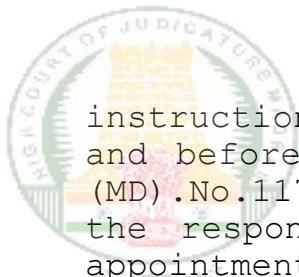
J U D G M E N T

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

The father of the respondent/writ petitioner namely M.Raju, while serving as a Superintendent Grade-1 Officer, in the services of the Ministry of Statistics and Programme Implementation, National Sample Survey Organisation, (NSSO), Thiruchirappalli, died in harness on 31.10.2009. The petitioner would state that he is having a qualification of B.E. Degree in Computer Science and Engineering and passed out in the year 2007 and his sister has already been married and living separately and he is the only son of his parents.

2. A representation dated 21.12.2009 was sent to the concerned authority, seeking appointment on compassionate ground and it was followed by reminder representation dated 08.01.2010. The Assistant Director & HO of the Ministry of Statistics and Programme Implementation, National Sample Survey Office, Coimbatore, vide communication dated 21.03.2011, had rejected the representation/application for the appointment on compassionate ground of the petitioner, on the ground that there is no provision for compassionate appointment to a Group-B post and also enclosed the supporting documents. Thereafter, the petitioner has submitted a fresh application dated 02.05.2011, seeking appointment on compassionate ground in any suitable post and vide communications dated 27.07.2012 and 13.08.2012, certain additional details have called for and the case of the petitioner was placed with other in the Screening Committee Meeting held on 22.03.2013, in respect of the persons who seeks appointment on compassionate ground during the period April 2012 to January, 2013. A similar committee have taken into consideration of all the applicants based upon the system devised by the Ministry of Statistics and Programme Implementation, vide office order No.A-12030/2/2000-Ad.II (Part-I), dated 26.12.2004, as well as instructions contained in Department of Personnel and Training in Office Memo.No.14014/2/2009-Estt.(D), dated 11.12.2009 and accordingly, done the tabulation and as per the same, the petitioner had secured 29 marks. Therefore, the Senior Administrative Officer of the above said Ministry sent a communication dated 26.06.2013, wherein, it has been stated that the case of the petitioner could not be recommended by the committee to consider his appointment on compassionate ground for various reasons like non-availability of sufficient vacancies in the cadres of Group-C etc. in the said division.

3. The learned counsel appearing for the appellants would submit once again that the petitioner has given the said request and it was again placed before the said committee and in terms of the



instructions/guidelines, his case could not be considered positively and before the order of rejection could be served, he filed W.P. (MD).No.11703 of 2013, praying for issuance of Mandamus, directing the respondents to provide him a job under compassionate ground appointment for the service rendered by his father.

WEB COPY

4. The primordial submission made by the learned counsel appearing for the petitioner is that admittedly, the respondent/writ petitioner neither made a challenge to the above cited administration, which provides the guidelines for considering the request for the appointment on compassionate ground nor to the order of rejection dated 26.06.2013 and therefore, took a preliminary objection as to the maintainability of the Writ Petition, as maintainable.

5. The learned counsel for the petitioner argued the merits of the matter and has drawn the attention of this Court to the impugned order passed in W.P.(MD).No.11703 of 2013 and would submit that without going into the contents of the counter affidavit and supporting documents filed by the appellant/official respondents, merely an equitable order has been passed with a positive direction and would further pointed out that the Hon'ble Supreme Court, in a catena of decisions, has laid down the prepositions that the appointment on compassionate ground is not a matter of right and therefore, prays for interference.

6. Per contra, the learned counsel appearing for the respondent/writ petitioner would submit that the petitioner is a B.E. graduate and on account of untimely demise of his father on 31.10.2009, the petitioner as well as his family are facing extreme financial difficulty and hardship. The respondent/writ petitioner has not seeking compassionate ground appointment commensurate with the qualification, but in any suitable post as per the wishes of the appellants/official respondents and taking into consideration of the relevant facts and circumstances, the writ petition came to be allowed and prays for dismissal of the Writ Appeal.

7. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

8. It is well settled position of law in terms of various pronouncements of the Hon'ble Supreme Court of India that this Court as well as the Administrative Tribunals cannot give any direction for appointment on compassionate ground merely directing consideration of the claim for certain appointment and the Hon'ble Supreme Court has laid down the principles for appointment on compassionate ground in **[JT 1991(2) SCC 183] LIC of India v. Mrs.Asha Ram Chandra Ambedkar & others** and **[1994 (3) SC 525] Umesh Kumar Nagpal Vs. State of Haryana & Others**, and the relevant portion is extracted as under:-

<https://hcservices.ecourts.gov.in/hcservices/>



"(i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.

(ii) The posts in Group C and D (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post i.e. in the Group A or Group B category is expected or required to be given for this purpose as it is legally impermissible.

(iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

(iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.

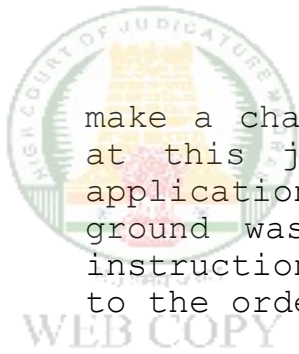
(v) Neither the qualifications of the applicant (dependent family member) not the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

(vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

(vii) Compassionate appointment cannot be offered by an individual functionary on an ad-hoc basis.

9. This Court has carefully considered the arguments advanced by the respective learned counsel appearing for the parties and also perused the materials as well as the above cited decisions.

10. It is well settled position of law that there is no vested right to secure appointment on compassionate ground, unless there is a lack of objective consideration or arbitrariness, while taking such a decision and then only, such a kind of order or act is amenable to the jurisdiction under Article 226 of the Constitution of India. The case of the petitioner has been considered in the light of the above cited scheme and instructions of the department of Personnel and Training and after objective consideration, the petition was placed in the Screening Committee and the petitioner had secured 29 marks as per the parameter and accordingly, vide order of rejection dated 26.06.2013, it was informed that his case could not be considered and admittedly, the petitioner had failed to



make a challenge to the said communication. It is also to be noted at this juncture, that a decision taken for the rejecting the application of the respondent/writ petitioner on compassionate ground was also in pursuant to the above said scheme of DOP&T instruction and admittedly, the petitioner neither made a challenge to the order of rejection nor to the said guidelines/instructions.

11. A perusal of the impugned order passed in W.P.(MD). No.11703 of 2013, it also disclose that the learned Single Judge merely went by the application of the respondent/writ petitioner dated 02.05.2011, submitted to the second appellant, where he agreed to take up any job and taking into consideration of the said application, a positive order came to be passed providing job to the petitioner on compassionate ground in respect of any post subject to the eligibility and suitability within a stipulated time and this Court is of the considered opinion that the said direction issued in impugned order, *per se* unsustainable in law, in the light of principles laid down by the Hon'ble Supreme Court in various pronouncements. It is once again reiterated that getting appointment on compassionate ground is not a matter of right and in fact, the decision before **[1994 (1) SCC 192] Auditor General of India v. G.Ananta Rajeswara Rao**, the Apex Court has held that the appointment on grounds of descent clearly violates the Article (16)2 of the Constitution of India, that in order to tied over immediate crisis/need of assistance and in order to address the grievances of the family members, a method can be formed out in the form of compassionate ground appointment.

12. The case of the respondent/writ petitioner is not fall in any of the parameters and as such, the impugned order positively directing the appellant/official respondents to provide appointment on compassionate ground and in the considered view of the Court is unsustainable. This Court also finds that there are errors apparent on the face of the record and therefore, the impugned order warrants interference.

13. In the result, **the Writ Appeal is allowed** and the impugned order dated W.P.(MD) No.11703 of 2013, is set aside and consequently, the Writ Petition is dismissed. However, in the circumstances of this case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation, (NSSO)
Field Operation Division,
Room No.412, 4th floor, S.P.Bawan,
New Delhi - 110 001.
2. The Deputy Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation, (NSSO)
Field Operation Division,
East Block, 6 R.K.Puram,
New Delhi - 110 001.
3. The Deputy Director General,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation, (NSSO) (FOD)
Regional Office, T.N (West),
No.13, Senkupta Street, Ramnagar,
Coimbatore - 641 009.
4. The Assistant Director,
Ministry of Statistics and Programme Implementation,
National Sample Survey Organisation, (NSSO) (FOD)
1st Main Road, Ramalinga Nagar, Woraiyur,
Thiruchirappalli - 620 003.

W.A. (MD) No.81 of 2017
and

C.M.P. (MD) No.755 of 2017

23.07.2020

SPU(31.07.2020)6P 5C