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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.12934 of 2010

and

M.P.No.1 of 2010

K.Muniammal

..Petitioner

vs.

1. Government of Tamil Nadu,
Rep. By Secretary,
Public Works Department,
Fort St.George, Chennai-600 009.

2. Engineer-in-Chief (WRO),
Public Works Department,
Chennai-600 005.

3. Chief Engineer (WRO),
Public Works Department,
Chennai Zone, Chennai-600 005.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in respect of Letter No.C2(2)/3476/10 dated 18.03.2010 and quash the orders caused therein and consequently direct the respondents to pay all the benefits including the family pension and other attendant benefits payable to the petitioner upon the death of her husband as NMR, whose service was regularized by G.O.(MS) No.334 (PW) (C2) Department dated 19.10.2007.

For Petitioner : Mr.W.M.Abdul Majeed

For Respondents : Mr.T.Arunkumar,
Additional Government Pleader

O R D E R

The petitioner, challenging the impugned order dated 18.03.2010, in and by which her application seeking compassionate appointment was rejected by the third respondent,



has filed the present writ petition.

2. It is the case of the petitioner that her husband late Kannan joined the Public Works Department as NMR [Nominal Mazdoor Roll] at the Sathanur Dam, Tiruvannamalai, in the year 1979. While he was working as NMR, he died on 02.01.2005, leaving behind the petitioner, two kids and his mother as legal heirs. According to the petitioner, her husband had completed 10 years of service as NMR on 01.07.1989 and based on the policy of the Government to regularize all those NMRs who had completed more than 10 years of service, proposals were sent to the Government including the name of the petitioner's husband along with those similarly placed for the purpose of regularizing their service. Subsequently, the services of the petitioner's husband and similarly placed persons were regularized by issuance of G.O.(Ms)No.334, PW(C2) Department dated 19.10.2007. It is the contention of the petitioner that even though her husband died in the year 2005, the above referred Government Order had included the name of the petitioner's husband as a person whose service had to be regularized under the above Government Order and the first respondent had also issued a clarification letter bearing Ms.No.403 dated 08.07.1997 that benefits should be given to all those NMR employees who died or got retired after their services were regularized.

3. The petitioner has also sent a representation to the third respondent on 23.02.2010 seeking benefits upon the death of her husband including family pension and compassionate appointment by enclosing all the necessary certificate and the third respondent, vide letter bearing No.E2(2)/ 3476/10 dated 18.03.2010 has returned the representation stating that since the second respondent had already returned a similar representation from one Bangaru, son of Late R.Kondappan. Challenging the said order of the second respondent, the present writ petition has been filed.

4. The third respondent has filed a detailed counter affidavit wherein it has been stated as under:

4.1. The services of 1056 NMR persons who have completed ten years of service have been regularized in G.O.(Ms)No.334, Public Works (C2) Department dated 19.10.2007 with the condition that the services regularized from the date of the said Government Order only. The monetary benefits, fixation of pay and other benefits should be effected from the date of the said Government Order only. Therefore, the benefits for the 10 years Nominal Muster Roll services were denied by the Court in the common order dated 29.08.2011, W.P.Nos.1286, 2175, 5887 and 7821 of 2009 and in the order dated 29.08.2011 in W.P.No.502 of 2010. The Nominal Muster Rolls workers should come to the regular



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establishment from the date of the said Government Order. Then only they will be treated as Government servant. But the petitioner's husband died on 02.01.2005. Hence, the petitioner's husband is not eligible to come to the regular establishment.

4.2. Thiru.Kannan / petitioner's husband, Nominal Muster Roll has died before regularization of his service. Therefore, his legal heirs have lost their rights to get any benefits. At present there are no rules to give any benefits to his family as such as a regular Government Servant. In G.O.(Ms)No.42, Labour and Employment (Q1) Department dated 12.03.2007, it is clearly stated in Para (2.2.7) that "No appointment on compassionate ground shall be given to dependents of casual or adhoc or temporary government servants appointed under Rule 10(a)(i) of General Rules contained in Tamil Nadu State and Subordinate Service Rules.

4.3. The second respondent in his letter dated 12.08.2009 has rejected the claim of the said Bangaru S/o. Late R.Kondappan for compassionate appointment by quoting G.O.(Ms)No.42, Labour and Employee (Q1) Department dated 12.03.2007.

5. The learned counsel for the petitioner would submit that the Government after relaxing the necessary rules in favour of the petitioner's husband have sought to regularize his service by issuance of G.O.(Ms)No.334 PW(C2) Department dated 19.10.2007 and the name of the petitioner's husband has been regularized against the cleaner vacancy in the Chennai Region and having regularized the services of the petitioner's husband, who died in the year 2005, the respondents cannot now deny the benefits including family pension etc., to the petitioner and as such, the impugned order is liable to be set aside.

6. Mr.T.Arunkumar, learned Additional Government for the respondents has placed reliance on the aforesaid stand taken by the third respondent in the counter affidavit and would contend that the petitioner's husband died in the year 2.1.2005 and whereas G.O.Ms.No.334, Public Works (C2) Department was passed on 19.10.2007 and therefore, the petitioner's husband is not eligible to come to regular establishment and the second respondent has rightly passed the impugned order by placing reliance on G.O.(Ms)No.42 Labour and Employment (Q1) Department dated 12.03.2007 and therefore, prays for dismissal of this writ petition.

7. This Court has considered the rival submissions and also perused the materials placed on record.

8. It is an admitted fact that the petitioner's husband



worked as NMR till his demise on 02.01.2005. It is the claim of the petitioner that her husband had completed ten years of service as NMR employee on 01.07.1989 and as per G.O.Ms.No.344 Public Works (C2) Department dated 19.10.2007, her husband's service is entitled to be regularized and he is deemed to be treated as Regular Employee and consequently, as a legal heir, the petitioner is entitled to get compassionate appointment. On the other hand, it is the stand of the respondents that the petitioner died in the year 2005 before G.O.Ms.No.344 came into effect and nowhere in the Government Order in G.O.Ms.No.344 dated 19.10.2007, it has been stated that monetary benefits be given to the deceased NMR i.e., not alive on the date of the said Government Order.

9. The distinction with regard to "Work Charged, Permanent and Regular Employee" with regard to grant of compassionate appointment was elaborately considered by the Hon'ble Supreme Court in the decision in State of Madhya Pradesh and Others v. Amit Shrivastava [(2020) 10 SCC 496], wherein the Hon'ble Apex Court has observed as follows:

"15. In our opinion, the only issue which has to be examined is whether the late father of the respondent who admittedly was employed as a work-charged/contingency employee in the Tribal Welfare Department was entitled to the compassionate appointment as per the existing policy on the date of his demise.

16. It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succour to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively. [State of Gujarat v. Arvindkumar T. Tiwari, (2012) 9 SCC 545 : (2012) 2 SCC (L&S) 795] Insofar as providing succour is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succour to the family immediately does not survive. We have still examined the matter in the conspectus of the applicable policy. It is not in question that the Policy prevailing was one dated 18-8-2008. Clause 12.1 clearly proscribes work-charge/contingency fund and daily wager employees from compassionate appointment. The gravamen of the submission of the respondent is based on the classification of his late father as a permanent employee on account of having worked for more than 15 years and the consequent regularisation of his service.



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17. In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work-charged employee and it is nobody's case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and krammonati. This will, however, not ipso facto give him the status of a regular employee.

(emphasis supplied)

...

24. We had the occasion of examining the issue of compassionate appointment in a recent judgment in *Indian Bank v. Promila* [*Indian Bank v. Promila*, (2020) 2 SCC 729 : (2020) 1 SCC (L&S) 312] . We may usefully refer to paras 3, 4, and 5 as under : (SCC p. 731)

"3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] , qua what would be the cut-off date for application of such scheme.

4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

5. An aspect examined by this judgment [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as



to what are the provisions made in the scheme for such compassionate appointment."

10. In Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138], the Honourable Supreme Court has held as follows:

"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."

11. In Bhawani Prasad Sankar vs. Union of India and Others [2011 (3) LLN 37 (SC)], the Honourable Supreme Court has held as follows:

"(i) Compassionate employment cannot be made in the absence of Rules or Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the Scheme.

(ii) ...

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be."

12. In State of Himachal Pradesh and another vs. Parkash Chand [(2019) 4 SCC 285], the Honourable Supreme Court has held as follows:

"8. The High Court while deciding issue (ix) has relied upon the decision of this



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Court in Govind Prakash Verma v. LIC [(2005) 10 SCC 289] more specifically on the observation that the mere fact that the elder brother of the applicant was engaged in agricultural work and was also doing the work of a casual painter, would not be construed as gainful employment. This finding in Govind Prakash Verma [(2005) 10 SCC 289] is purely on the facts of that case and cannot be construed to be of any relevance to the present case.

9. The High Court has observed that the State should consider cases for appointment on compassionate basis by dealing with the applications submitted by sons, or as the case may be, daughters of deceased government employees, even though, one member of the family is engaged in the service of the government or an autonomous board or corporation. This direction of the judgment of the High Court virtually amounts to a mandamus to the State Government to disregard the terms which have been stipulated in paragraph 5(c) of its Policy dated 18-1-1990. The policy contains a limited exception which is available only to a widow of a deceased employee who seeks compassionate appointment even though one of the children of the deceased employee is gainfully employed with the State. The basis for this exception is to deal with cases where the widow is not being supported financially by her children.

10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to re-write 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 [(1994) 4 SCC 138], SBI v. Kunti Tiwary [(2004) 7 SCC 271, Punjab National Bank v. Ashwini Kumar Teneja [(2004) 7 SCC 265], SBI v. Somvir Singh [(2007) 4 SCC 778, Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384], Union of India v. Shashank Goswami [(2012) 11 SCC 307, SBI v. Surya



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Narain Tripathi [(2014) 15 SCC 739 and Canara Bank v. M. Mahesh Kumar [(2015) 7 SCC 412].

11. For the above reasons, we are of the view that the judgment of the High Court is unsustainable. The High Court has virtually rewritten the terms of the Policy and has issued a direction to the State to consider applications which do not fulfill the terms of the policy. This is impermissible."

13. Furthermore, G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, has clearly prescribed various guidelines for considering the applications for compassionate ground appointment and it is useful to quote the following guidelines in the said Government Order:

PERSONS WHOSE LEGAL HEIRS ARE NOT ELIGIBLE FOR CONSIDERATION UNDER COMPASSIONATE GROUND APPOINTMENT:

- (i) Persons who are retained in service under Fundamental Rule 56(1)(c) after the date of superannuation;
- (ii) Persons who are under temporary appointments, consolidated pay, daily wages, contract appointments and whose services are not regularized.
- (iii) Persons who do not come under regular time scale of pay.

14. In the case on hand, the petitioner's husband worked as NMR from the year 1979 till his demise on 02.01.2005. The Hon'ble Supreme Court in the decision in Amit Shrivastava case (cited supra) has observed that attainment of status of permanent employee by a work-charged employee, on account of having completed 15 years of service will however, not ipso facto give him the status of a regular employee and hence, the service of the petitioner's husband, cannot be treated as regularized.

15. Further, Clause (ii) of the guidelines in G.O.Ms.No.18 extracted above also clearly specifies that persons who are under temporary appointments, consolidated pay, daily wages, contract appointments and whose services are not regularized are not entitled for compassionate ground appointment. Moreover, the object of giving compassionate ground appointment is to meet out the sudden crisis occurring in the family on account of death or medical invalidation of the breadwinner while in service. In the case on hand, the deceased family was able to survive for



about 16 years after the demise of the employee and the object of giving of compassionate ground appointment would get defeated, if this Court directs the respondents to consider the claim of the petitioner.

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16. In view of the aforesaid reasons, this Writ Petition fails and according it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

Jvm

To

1. The Secretary,
Government of Tamil Nadu,
Public Works Department,
Fort St.George, Chennai-600 009.
2. Engineer-in-Chief (WRO),
Public Works Department,
Chennai-600 005.
3. Chief Engineer (WRO),
Public Works Department,
Chennai Zone, Chennai-600 005.

+1cc to the Government Pleader, S.R.No.63790

W.P.No.12934 of 2010

BR(CO)
RGA(16/12/2021)