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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

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THE HON'BLE MR.JUSTICE P.D. AUDIKESAVALU

W.P. No. 24337 of 2010

R.Perumal Valavan

...Petitioner

-vs-

1.The Government of Tamil Nadu,
represented by its Secretary,
School Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
College Road,
Chennai - 600 006.

3.The District Educational Officer,
Namakkal District,
Namakkal.

4.The Head Master,
Krishnaveni Government Girls Higher Secondary School,
Pallipalayam, Namakkal District.

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records in pursuance to the impugned order passed by the Third Respondent in Na.Ka.No. 3920/A1/2007 dated 03.09.2010 and to quash the same and consequently direct the Respondents to appoint the Petitioner on compassionate ground in any suitable post based on his qualification.

For Petitioner : Mr. K.Sathish Kumar

For Respondents : Mrs. S.Mythreye Chandru,
Special Government Pleader

O R D E R
(through video conference)

Head Mr. K.Sathish Kumar, Learned Counsel for the Petitioner
and Mrs. S.Mythreye Chandru, Learned Special Government Pleader



appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The father of the Petitioner, viz., P.Ramakrishnan, while working as Secondary Grade Teacher in the school of the Fourth Respondent, had died in service on 04.01.1995 and thereafter, there was an inter se dispute amongst his legal heirs leading to the filing of the suit in O.S. No. 127 of 1995 before the District Munsif Court, Sankari, which came to be finally disposed by order dated 17.11.1999 after the contesting parties had entered into a compromise in that regard.

3. The Petitioner had made an application dated 30.10.2002 for compassionate appointment, which was returned on 08.03.2003 for want of certain documents. After re-submitting the documents, the Third Respondent had recommended for the appointment of the Petitioner to the Second Respondent, but the application was returned seeking further documents on 21.12.2004, 25.01.2005 and 12.07.2008. According to the Petitioner, though he had complied with the defects, the Third Respondent by Order in Na. Ka. No. 3920/A1/2007 dated 03.09.2010 ultimately rejected the application as time barred by referring to G.O. Ms. No. 120, Labour and Employment Department dated 26.06.1995 in which a time limit of three years from the date of death of the deceased employee has been stipulated. The said order is assailed in this Writ Petition.

4. The contention of the Petitioner is that after the death of his father on 04.01.1995, he was under disability to pursue the claim for compassionate appointment on account of the litigation between the legal heirs of his father, which ended on 17.11.1999, that the application for compassionate appointment had been made on 30.10.2002 within three years from the date on which the litigation ended, and that the Petitioner cannot be faulted for the time taken in the interregnum. It is further submitted that the Petitioner is not responsible for the inordinate time taken by the Respondents from 30.10.2002 till 03.09.2010, when the impugned order was passed, after he had produced all documents sought from him.

5. Though the aforesaid submissions made on behalf of the Petitioner appear to be attractive, on deeper scrutiny of the legal position regarding appointment to public services on compassionate grounds, it is not possible to accept the same. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in Umesh Kumar Nagpal -vs- State of Haryana [(1994) 4 SCC 138], where it has been laid down as follows:-

"2. The question relates to the considerations which should guide while giving appointment in public



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services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in



favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

Recapitulating that compassionate appointment is an exception to the general rule, the Hon'ble Supreme Court of India in State of Jammu and Kashmir -vs- Sajad Ahmed Mir [(2006) 5 SCC 766], has held as follows:-

"11.Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

Again, the Hon'ble Supreme Court of India in Local Administration Department -vs- M. Selvanayagam [(2011) 13 SCC 42], has held as follows:-

"11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependants is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependants and the financial deprivation caused to the dependants as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of



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already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.

14. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments."

In a recent decision in Government of India -vs- P.Venkatesh (Judgment dated 01.03.2019 in Civil Appeal No. 2425 of 2019), the Hon'ble Supreme Court of India has reiterated the legal position as follows:-

"Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need...."

In view of the aforesaid legal position with specific reference to the factual backdrop in the instant case, neither the circumstance that the Petitioner was not able to apply for compassionate appointment on account of the disputes between the legal heirs of the deceased employee from 04.01.1995 to 17.11.1999, nor the inordinate delay on the part of the Respondents in deciding the application for compassionate appointment made by the Petitioner would provide any justification to direct re-consideration of the claim of the Petitioner on compassionate grounds. It is also apparent that the Petitioner had been able to tide over the crisis with the passage of time for more than 25 years and if any indulgence is now shown at this distance of time brushing aside those germane aspects, it would unwittingly tantamount to unduly favouring the



Petitioner to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced.

6. In that view of the matter, the impugned order does not require any interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

vjt/skr

To

- 1.The Secretary to Government of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.
- 3.The District Educational Officer,
Namakkal District,
Namakkal.

W.P.No.24337 of 2010

AK-II(CO)
RVM(21/12/2021)