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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM

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

W.P. No. 28923 of 2010

K.B.Devaraj

...Petitioner

-vs-

1. The Director of School Education,
Chennai - 600 006.

2. The District Educational Officer,
Coonoor,
The Nilgiris District.

3. The Secretary,
Sri Sarguru Adivasi High School and Primary School,
Coonoor,
The Nilgiris District.

4. J.B.Sivakumar

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Third Respondent to cancel the appointment of the Fourth Respondent and to appoint the Petitioner in the place of the Fourth Respondent on compassionate grounds.

For Petitioner : Mr. R.Ganesan for M/s. C.S.Associates

For Respondents: Mr. C.Harsha Raj,
Additional Government Pleader (for R1 & R2)

Mr. R.Saravanan
for Mr. T.Saikrishnan (for R3)

No appearance (for R4)



O R D E R
(through video conference)

Heard R.Ganesan, Learned Counsel appearing for the Petitioner, Mr.C.Harsha Raj, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. R.Saravanan, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2.The father of the Petitioner, A.K. Belliraj, while working as Secondary Grade Teacher in the School of the Third Respondent, had died in service on 09.11.1988 and the Petitioner has made an application for compassionate appointment in the year 1993. The Third Respondent expressed its inability to consider such application as one Pugalendhi, who was the son of another employee who died while in service in 1989, had been given appointment on compassionate grounds in the year 1991 itself. The Writ Petition in W.P.No. 1993 of 2000 filed by the Petitioner long thereafter challenging the appointment of the said Pugalendhi was dismissed by this Court by Order dated 21.04.2003 in W.P. No. 19931 of 2000. The Petitioner now challenges the appointment of the Fourth Respondent who had been selected as Office Assistant in furtherance to notification calling upon the eligible candidates to attend interview on 18.05.2010 for that post.

3.The contention of the Petitioner is that such appointment of Office Assistant ought not to have been made without considering the case of the Petitioner on compassionate grounds to that post, but it is not possible to accept the same for various reasons. In the first place, it requires to be pointed out that the Petitioner has not produced any scheme of compassionate appointment in justification of the claim made. Secondly, inasmuch as this Court in the Order dated 21.04.2003 in W.P. No. 19931 of 2000 has already rejected the claim of the Petitioner for consideration for appointment on compassionate grounds, it is not permissible in law for the Petitioner to re-agitate the same matter under the guise of impeaching a regular appointment made.

4.That apart, the legal position regarding appointment to the public services on compassionate grounds has been lucidly summarized by the Hon'ble Supreme Court of India in Umesh Kumar Nagpal -vs- State of Haryana [(1994) 4 SCC 138], as follows:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a



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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



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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 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...."

On a conspectus of the legal principles in the aforesaid legal decisions coupled with the fact situation borne out of the record, it is apparent that the Petitioner had been able to tide over the crisis with the passage of time for more than four decades 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.

5. In that view of the matter, it is not possible to interfere with the appointment of the Fourth Respondent to the post of Office Assistant in the School of the Third Respondent.

In the result, the Writ Petition, which lacks merits, is dismissed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vjt/skr

To

1. The Director of School Education,
Chennai - 600 006.
2. The District Educational Officer,
Coonoor,
The Nilgiris District.

+1cc to M/s.T.Saikrishnan, Advocate, S.R.No.65884

+1cc to M/s.P.Ganesan for C.S.Associates, Advocate, S.R.No.66018

+1cc to the Government Pleader, S.R.No.66594

W.P. No. 28923 of 2010

KSM(CO)
RGA(21/12/2021)