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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.35072 of 2013
and M.P.No.1 of 2013

S.Ramu

..Petitioner

vs.

1.The District Collector,
The Office of the District Collector,
Vellore District.

2.The Sub-Collector,
The Office of the District Collector,
Ranipet, Vellore District.

3.The Tahsildar,
Arakonam, Vellore District.

4.Rathinam

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring that the appointment of the 4th respondent as Thakolam Village Assistant as null and void and consequently direct the respondents to consider the petitioner for appointment under compassionate ground with all consequential benefits.

For Petitioner : Mr.P.G.Thiyagu

For Respondents : Mr.P.Anandha Kumar,
Additional Government Pleader
for R1 to R3

O R D E R

The petitioner, challenging the appointment of the fourth respondent as Village Assistant and also for a direction to the respondents to consider the case of the petitioner for appointment under compassionate ground with all consequential benefits, has filed the present writ petition.



2. The case of the petitioner is that his father was employed as Village Assistant in Thakolam Village and he died on 16.05.1992 while in service, leaving behind the petitioner, his mother and two sisters as his legal heirs. At the time of demise of petitioner's father, the petitioner was studying 10th standard and a minor and therefore, he could not seek for compassionate ground appointment. The representations made by his mother, seeking compassionate ground appointment for her or to his elder sister who had completed 10th standard, were also not considered by the first respondent. However, one Rathinam, claiming as brother-in-law of the petitioner's father, seems to have applied as a legal heir for compassionate appointment and was appointed on 28.07.1992 as Sipanthi in the Thakolam Villge. The appointment of said Rathinam was also not informed to the petitioner's family and after attaining majority on 21.07.1998, the petitioner made an application to the first respondent and the petitioner's mother also made application to the first respondent seeking appointment under compassionate ground and after repeated follow up, finally the petitioner received an order dated 20.12.2007, impugned herein, from the first respondent admitting that the fourth respondent was appointed on compassionate ground, since he applied to the vacancy arose due to the death of his father in the appropriate time and he was found eligible with all qualifications. Challenging the aforesaid action of the respondents, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner reported that he has no instructions from the petitioner.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the fourth respondent was appointed not only based on the fact that he being the brother-in-law of the deceased but also based on his qualification and eligibility criteria for the said post at the relevant point of time and therefore, the claim of the petitioner, challenging the appointment of the fourth respondent, is unsustainable and prays for dismissal of the writ petition.

5. Admittedly, the petitioner's father late Sundaram died on 16.05.1992 while in service and since the petitioner was studying 10th Standard and minor at that time, he could not apply for compassionate appointment and after attaining majority, he submitted the application on 21.07.1998, after the prescribed period of three years. It is the claim of the petitioner that the fourth respondent, being the brother-in-law of the deceased, seems to have applied as the legal heir of the deceased and obtained compassionate ground appointment, vide impugned order of the first respondent.

6. A perusal of the impugned order passed by the first respondent would disclose that as per the Government Rules



prevalent, the posts of Village Assistant can be filled up based on recommendation from Employment Exchange, based on education qualification and since the petitioner did not register his educational qualifications with the jurisdictional Employment Exchange, he was deemed to be unfit for oral interview. It is further disclosed in the impugned order that the petitioner's father worked only as part time Grama Sippanidi and the recruitment rules as in vogue from 01.06.1995 cannot be made applicable to the permanent post of Village Assistant and as per the instructions from the Government, for the permanent post of Village Assistant, compassionate ground appointment is not feasible of consideration. The impugned order further disclosed that the fourth respondent was appointed as Thakolam Village Assistant not only based on the fact that he being the brother-in-law of the deceased, but also he possessed requisite educational qualification and eligibility criteria and no one was available to the said post except the fourth respondent at the relevant point of time.

7. This Court is of the view that the aforesaid reasoning given by the first respondent in the impugned order is perfectly valid and finds no reason to interfere.

8. Further, the object of giving compassionate ground appointment is to mitigate the immediate sudden financial crisis caused to the family of the deceased on account of demise of the Government Servant. It is useful to refer to the decision of the Hon'ble Apex Court in Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138], wherein the Hon'ble 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."

9. 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



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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."

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

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



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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 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."

Furthermore, G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, has clearly prescribed comprehensive guidelines for compassionate ground appointment, in supersession of all the earlier orders issued.

11. In the case on hand, the petitioner's family was able to survive for about 29 years after the death of the deceased/employee and the claim of the petitioner for employment after 29 years of death of his father was not to mitigate the indigent circumstance and the very purpose of the act would be defeated if the respondents are directed to consider the case of the petitioner for appointment on compassionate ground. In view of the aforesaid facts and settled legal position, the claim of the petitioner cannot be entertained and it deserves to be rejected. This Court finds no reason to interfere in the impugned order passed by the first respondent. The learned counsel for the petitioner has also reported no instructions and therefore, this Court based on the affidavit, materials on record and settled legal position has arrived at the aforesaid conclusion.



12. In view of the aforesaid reasons, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Jvm

To

1.The District Collector,
The Office of the District Collector,
Vellore District.

2.The Sub-Collector,
The Office of the District Collector,
Ranipet, Vellore District.

3.The Tahsildar,
Arakonam, Vellore District.

+1cc to Government Pleader SR. No.64880

W.P.No.35072 of 2013

KV (CO)
PR (21/12/2021)