



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.25906 of 2014
and M.P.No.1 of 2014

T.Kannan

.. Petitioner

vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

2.The District Educational Officer,
Namakkal.

..

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 relating to the impugned order dated 06.09.2013 in reference Na.Ka.No.2244/A1/2012 passed by the 2nd respondent and quash the same and consequently direct the respondents to appoint he petitioner in any of the respondent's department.

For Petitioner : M/s.K.A.Mariappan

For Respondents : Mr.V.Nanmaran,
Additional Government Pleader

O R D E R

The petitioner, challenging the impugned order of the second respondent in Na.Ka.No.2244/A1/2012 dated 06.09.2013, in and by which his claim for compassionate ground appointment came to be rejected, has filed the present writ petition.

2. The case of the petitioner is that he is a physically challenged person and his father late Thangappan was working as Elementary School Teacher at Olapalayam Panchayath School and died on 17.08.1997 while in service. Immediately after the demise of the petitioner's father, the petitioner's elder brother



Mr.Balachander filed an application dated 30.08.1998 seeking appointment on compassionate ground. According to the petitioner, at the time of submitting the application, since the petitioner's brother had crossed the age of 30, the respondents, vide letter dated 05.06.2000 directed the petitioner's brother to obtain relaxation from the Government as per Chief Minister's Standing Order No.2 (Administrative and Reforms Department) dated 09.01.1992.

3. It is further averred by the petitioner that since the petitioner's brother crossed the age, in order to give way to the petitioner, who is his younger brother and also a physically challenged person, other legal heirs have no objection for giving appointment to the petitioner, who at that time was within the age limit and therefore, the petitioner submitted the application for compassionate ground appointment with relevant particulars on 30.06.2000. The said application was rejected by the second respondent, vide impugned order dated 06.09.2013 and challenging the same, the present writ petition has been filed.

4. The learned counsel for the petitioner would submit that originally the elder son of the deceased applied for compassionate ground appointment during 1998 and due to age bar, the petitioner applied subsequently with the consent of other legal heirs and further, there is an inordinate delay of 12 years in rejecting the bonafide claim of the petitioner and therefore, prays for interference.

5. The learned Additional Government Pleader appearing for the respondents would submit that the whole object of giving compassionate ground employment is to enable the family of the deceased to tide over the sudden financial crisis and the consideration of compassionate ground appointment is not a vested right which can be exercised at any time and further there is no provision for giving compassionate ground appointment to an alternative legal heir and therefore, prays for dismissal of this writ petition.

6. This Court has considered the submissions made and also perused the materials placed before it.

7. Admittedly, the petitioner's father late Thangappan died on 17.08.1997 while in service and immediately the petitioner's elder brother Mr.Balachander filed the application dated 30.08.1998 seeking appointment on compassionate ground and at that time, since the petitioner's brother had crossed the age of 30, he was directed by the respondents to obtain age



relaxation from the Government. Since the petitioner's brother crossed the upper age limit, the petitioner submitted the application for compassionate ground appointment with relevant particulars on 30.06.2000 and the said application was rejected by the second respondent, vide impugned order dated 06.09.2013, on the ground that there is no provision to give compassionate ground appointment to an alternative legal heir.

8. 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 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



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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 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



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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."

11. 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. Further, in the above said Government order, with regard to alternative application, it has been held thus:

Alternative Application: If the applicant (legal heir of deceased Government Servant) died after applying for compassionate ground appointment, an alternative application may be accepted from the another legal heir of the deceased Government Servant, subject to conditions prescribed for compassionate ground appointment.

12. It is also to be noted that the petitioner's family was able to survive for about 24 years after the death of the deceased/employee and the claim of the petitioner for employment after 24 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 respondent is directed to consider the case of the petitioner for appointment on compassionate ground.



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13. In view of the aforesaid facts and the 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 second respondent.

14. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

Jvm

To

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

2.The District Educational Officer,
Namakkal.

+1cc to Mr.K.A.Mariappan, Advocate SR.No.64550

+1cc to the Government Pleader, SR.No.64876

W.P.No.25906 of 2014

KV(CO)
CB(15/12/2021)