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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.27414 of 2014

P.Kumaravel

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. By Principal Secretary to Government,
Education Department,
Fort St.George, Chennai.

2.The Director of School Education,
DPI Campus, 68, College Road,
Chennai-600 006.

3.The District Elementary Education Officer,
Thiruvarur.

4.The Additional Assistant Elementary Education Office,
Mannarkudi,
Thiruvarur District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the second respondents proceedings No.Moo.Mu.No.058571/J2/2013 dated 15.10.2013 to quash the same and consequently direct the respondents to consider and appoint the petitioner to any eligible post on compassionate ground.

For Petitioner : M/s.T.Padmanabhan

For Respondents : Mr.T.Arunkumar,
Additional Government Pleader
for R1 to R4

O R D E R

The petitioner, challenging the impugned order of the second respondent dated 15.10.2013, in and by which his request for appointment on compassionate ground came to be rejected, has filed this writ petition.



2. The case of the petitioner is that his father late V.Pichaiappan was working as Headmaster in Mannarkudi Taluk Vettikadu Panchayat Board Elementary School and he died while in service on 12.11.1996, leaving behind his wife, four daughters and one son / petitioner herein. The petitioner had submitted an application along with necessary documents/certificates to the third respondent on 10.02.1997, seeking appointment on compassionate ground. The third respondent forwarded the petitioner's application to the second respondent on 20.12.2000 and thereafter, there were exchange of communications from the respondents to the petitioner asking for various particulars and the same was also complied with and finally the second respondent, vide impugned proceedings dated 15.10.2013 has rejected the petitioner's application on the ground that after the demise of petitioner's father and while consideration of petitioner's application seeking compassionate ground appointment, the petitioner's family was not in indigent circumstance since the petitioner's sister, namely P.Suganthi was working as Secondary Grade Teacher in Parthikottai Panchayat School. Challenging the impugned order of the second respondent, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner would submit that the respondents had rejected the request of the petitioner seeking compassionate ground appointment mainly on the ground that the family of the petitioner was not in indigent circumstance after the demise of his father since the petitioner's sister was employed as Teacher in the School Education Department, but the petitioner's sister subsequently got married and thereafter there is no support from her to the petitioner's family and therefore, prays for setting aside the impugned order passed by the second respondent and direct the respondents to consider and appoint the petitioner to any eligible post on compassionate ground.

4. Mr.T.Arunkumar, learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit filed by the fourth respondent and would submit that on verification of the petitioner's application by the third respondent, it was found that the second daughter of the deceased viz., Mrs.P.Suganthi was working as Secondary Grade Teacher in Panchayat Union Elementary School, Partithikodai as seen from her marriage invitation and upon enquiry, it is made clear that the petitioner's sister was working as Teacher before the death of the petitioner's father and she got married only in the year 2000 and the petitioner's claim was rightly rejected by



the second respondent by the impugned order and therefore, prays for dismissal of this writ petition.

5. I have anxiously considered the rival submissions of the learned counsel for the parties and perused the materials placed on record.

6. The question arises for consideration is whether the family of the petitioner was in indigent circumstance on account of the demise of petitioner's father at the time of consideration of the application of the petitioner for appointment on compassionate ground ?

7. It is not in dispute that the petitioner's father one Mr.V.Pichaiappan, who worked as Headmaster in Mannarkudi Taluk Vettikudu Panchayat Board Elementary School, died while in service on 12.11.1996, leaving behind the petitioner, his mother and four sisters and the petitioner had submitted the application seeking appointment on compassionate ground on 10.02.1997 within the mandatory period of three years. The claim of the petitioner was rejected vide impugned order on the ground that the petitioner's sister was working as Secondary Grade Teacher before the death of the deceased and the time of consideration of petitioner's application, she is a earning member of the deceased family.

8. It is the stand of the fourth respondent in the counter affidavit that as per G.O.Ms.No.155, Labour and Employment Department dated 16.07.2003, if there is already any earning member in the family of the Government Servant who died in harness, the other dependents of the deceased Government Servant will not be eligible for compassionate appointment.

9. At this juncture it is useful to refer to the decision of the Hon'ble Supreme Court In Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138], wherein 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



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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."

10. 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."

11. 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 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



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



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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."

12. The object of giving compassionate ground appointment is to mitigate the immediate the sudden financial crisis caused to the family of the deceased employee. In the case on hand, the petitioner's second sister, namely Mrs.Suganthi was working as a Teacher in the Panchayat Union Middle School as on the date of the demise of his father and she continued living with her family and also there is no indigent situation in the petitioner's family. Moreover, the petitioner's family was able to survive for about 25 years and the claim of the petitioner for employment after 25 years of death of his father was not to mitigate the indigent circumstance.

13. In view of the above settled legal position, this Court finds no reason to interfere in the impugned order passed by the second respondent. Accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

Jvm

To:

- 1.The Principal Secretary to Government,
The State of Tamil Nadu,
Education Department,
Fort St.George, Chennai.
- 2.The Director of School Education,
DPI Campus, 68, College Road,
Chennai-600 006.
- 3.The District Elementary Education Officer,
Thiruvavarur.



4.The Additional Assistant Elementary Education Office,
Mannarkudi, Thiruvarur District.

Placed to the Government Pleader, SR.No.60309

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VSN II(CO)
CB(03/12/2021)