



WEB COPY

W.P.(MD) No.12064 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.12064 of 2018

and

W.M.P. (MD) No.10997 of 2018

K.Ravi

... Petitioner

-VS-

1.The Regional Director of Municipality
Tirunelveli
Tirunelveli District

2.The Commissioner
Aruppukottai Municipality
Virudhunagar District

... Respondents

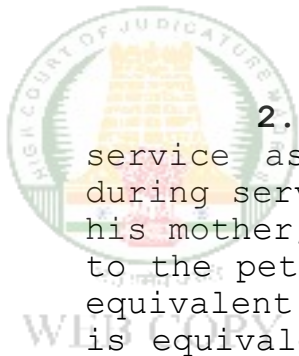
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records on the files of the second respondent pertaining to its order bearing Na.Ka.No.3402/2016/E1, dated 06.12.2016 and to quash the same and consequently direct the second respondent to provide suitable employment on compassionate ground to the petitioner.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.A.K.Manickam
Government Counsel for R1
Mr.N.Dilip Kumar, Standing Counsel for R2

O R D E R

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus to quash the order dated 06.12.2016, passed by the second respondent and to direct the second respondent to provide employment on compassionate ground to the petitioner.



2. The case of the petitioner is that his father joined service as Gancooli in the office of the second respondent and during service, he died on 30.03.2015 leaving behind the petitioner, his mother, one brother and three sisters as legal heirs. According to the petitioner, he has completed Pre-foundation Course and it is equivalent to 10th standard and the first year of Foundation Course is equivalent to 11th standard and the second year is equivalent to 12th standard. Therefore, according to the petitioner, he is possessing requisite educational qualification for being appointed on compassionate grounds.

3. The petitioner would submit that his mother made an application on 28.04.2015 seeking appointment on compassionate ground to him and the other legal heirs of the deceased employee had also given their consent for the same. However, the second respondent has passed the impugned order, dated 06.12.2016, rejecting the application for compassionate appointment. Challenging the same, he has filed this writ petition.

4. The learned counsel appearing for the petitioner would submit that the second respondent has erroneously rejected the petitioner's application for compassionate appointment. According to the learned counsel, the petitioner belongs to Scheduled Tribes community and therefore, he is entitled for age relaxation. The learned counsel would further submit that as per Rule 12(d) of Tamil Nadu State and Subordinate Service Rules, the maximum age limit prescribed in the Special Rules is not applicable to the candidates belonging to the Scheduled Castes and Scheduled Tribes community. Therefore, on the sole ground, the impugned order is liable to be set aside.

5. The learned Standing Counsel appearing for the second respondent - Municipality strongly objected to the contentions of the learned counsel for the petitioner. According to the learned Standing Counsel, as per Rule 11B of Tamil Nadu Municipal Service Rules, 1970, the maximum age limit for appointment by direct recruitment on compassionate grounds, shall be thirty years in respect of sons or the unmarried daughters and forty years in respect of wife or husband of the municipal employee. The learned Standing Counsel would further submit that the Honourable Supreme Court as well as this Court in a catena of decisions have repeatedly held that compassionate appointment cannot be made contrary to the relevant Rules. That apart the object of the compassionate appointment is to enable the family of the deceased employee to tide over the crisis caused as a result of the untimely death of the employee and it is not a matter of right. Therefore, the impugned order passed by the second respondent does not warrant any interference of this Court.



6. I have anxiously considered the rival submissions of the learned counsel for the parties and carefully perused the materials available on record.

7. The primordial contention of the petitioner is that the second respondent has rejected his request for compassionate appointment is only on the ground that he is over aged at the time of submitting application. According to the petitioner, as per Rule 12(d) of Tamilnadu State and Subordinate Service Rules, the maximum age limit prescribed in the special rules is not applicable to the Scheduled Caste and Scheduled Tribes candidates. Therefore, as per Rule 12(d), he is entitled for age relaxation for compassionate appointment.

8. On the other hand, as per Rule 11B of Tamil Nadu Municipal Service Rules, 1970, the maximum age limit for appointment by direct recruitment on compassionate grounds, shall be thirty years in respect of sons or the unmarried daughters and forty years in respect of wife or husband of the municipal employee. Therefore, when the aforesaid Rule is very clear and there is no provision for granting age relaxation to the petitioner, the petitioner is not entitled for age relaxation.

9. In **Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138]**, 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 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 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].

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. In Government of India and another v. P.Venkatesh [(2019) 15 SCC 613], the Honourable Supreme Court has held as follows:

"8. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9-8- 2016, nearly twenty one years had elapsed since the date of the death of the employee.

9. ...

10. Bearing in mind the above principles, this Court held: (Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138) SCC pp.141-42, para 6)

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The



WEB COPY

consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

13. The Honourable Full Bench in Paragraph No.13 of the **Judgment dated 11.03.2020 in W.P.(MD) No.7016 of 2011** has held as follows:

"13. In the light of the above we find that the judgment in the case of A.Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E.Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

14. In Tamil Nadu Municipal Service Rules, 1970, which is applicable to the facts and circumstances of the case on hand, there is no provision for granting age relaxation for compassionate appointment. Unless there is age relaxation in the statute, the Court cannot traverse the period prescribed by the Authority. Therefore, in view of the above settled legal position and the decisions cited supra, this Court is of the view that the contention of the petitioner for age relaxation is liable to be rejected.

15. In fine, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

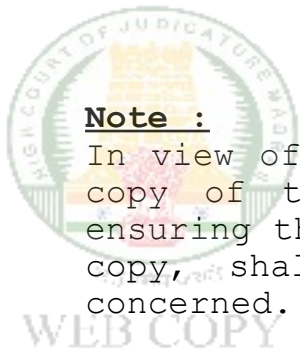
Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

krk

To:

The Regional Director of Municipality,
Tirunelveli, Tirunelveli District.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-25277[F] dated
05/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-25416[F] dated 05/08/2021)

+1 CC to M/s.GP (SR-25493[F] dated 06/08/2021)

W.P. (MD) No.12064 of 2018

and

W.M.P. (MD) No.10997 of 2018

04.08.2021

MGJ(12.08.2021) 7P 5C