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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11646 of 2016

V.Balachandar ... Petitioner

Vs.

The District Collector,
Office of the District Collector,
Cuddalore District,
Cuddalore. ... Respondent

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the entire records connected with the proceedings of the respondent in Pa.Mu.(A1)/25491/2014 dated 11.11.2014 and quash the same consequently direct the respondent to provide a suitable job to the petitioner on compassionate ground within a time frame that may be fixed by this Court.

For Petitioner : Mr.K.Thilageswaran
For Respondent : Mr.K.Surendran,
Additional Government Pleader

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O R D E R

The order of rejection dated 11.11.2014, rejecting the claim of the writ petitioner for compassionate appointment on the ground that married persons seeking appointment on compassionate ground is not entertainable with reference to the terms and conditions of the scheme of compassionate appointment, is under challenge in the present writ petition.

2. The father of the writ petitioner late Mr. Viswanathan, was employed as Assistant in the office of the respondent and died on 17.11.2001. Initially the daughter of the deceased employee Ms. Laksmidevi, submitted an application and her application was not considered on account of the fact that she was not eligible due to her age. After the lapse of many years, the petitioner, who is the son of the deceased employee submitted an application on 29.08.2011 and the said application was not considered by the respondents.

3. Scheme of compassionate appointment is a concession and cannot be claimed as an absolute right. Scheme being an exception, cannot be expanded for the purpose of providing appointment on compassionate

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grounds in a larger manner. Large scale compassionate appointment would result in infringement of the Fundamental Rights of the eligible citizen, who all are aspiring to secure public employment through open competitive process. Scheme of compassionate appointment being a concession, to be implemented in a restricted manner, so as to provide appointment only to the families, who all are genuinely in penurious circumstances and in this regard, the authorities competent are bound to conduct field inspections and ascertain the imminent circumstances, warranting an appointment on compassionate grounds. It is not as if one appointment is to be granted to the family of the deceased employee and it is not as if every legal heir can submit the application and thereafter, the appointment is to be considered. Once an application is filed by any one of the legal heir of the deceased employee and the said legal heir became ineligible, it is not as if that other legal legal heir can submit an application irrespective of the length of time. In the event of entertaining such repeated applications for compassionate appointment, the very purpose and object of the scheme would be defeated. The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death of an employee. Therefore, the scheme cannot be expanded nor any consideration is to be shown on misplaced sympathy, which would result in denial of

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Fundamental Right to all other eligible candidates, who all are longing to secure public employment. Thus, the Courts are not expected to grant compassionate appointment on misplaced sympathy. Such sympathy would result in unconstitutionality. Scheme being violative of Articles 14 and 16 of the Constitution of India, since there is no merit assessment of the applicant and there is no application of rule of reservation, there is no other assessment is made for appointment on compassionate grounds. In the event of large scale compassionate appointment, the efficiency level in the public administration will also be in stake. The Rule of Reservation, merit assessment and no other assessment has been made and therefore, the large scale appointments causing inefficiency in public administration, which would result in violations of the Constitution provisions, since the Constitution mandates an efficient public administration.

4. Lapse of time would also provide a ground to draw a factual inference that the penurious circumstances aroused on account of the sudden death of an employee became vanished. Thus, Courts have repeatedly held that compassionate appointment cannot be granted after several years.

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5. Even to ascertain the indigent circumstances, the pensionary benefits are also to be taken into consideration. The Supreme Court of India in the case of ***Union of India and others Vs. Amrita Sinha*** in ***C.A.No.7640 –7641 of 2021*** dated 11.12.2021 (2021 15 Scale 174) held in Paragraph No.10 as follows :

> *"The monthly pension which was payable to the respondent was required to be taken into account in the award of merit points. The Tribunal, however, came to the conclusion that pension is paid for past service rendered by the employee and, hence, denial of compassionate appointment on that basis was not justifiable. This reasoning of the Tribunal is fallacious. Undoubtedly, pension is not an act of bounty, but is towards the service which has been rendered by an employee. However, in evaluating a claim for compassionate appointment, it is open to the authorities to evaluate the financial position of the family upon the death while in service. Compassionate appointment is not a vested right. It is provided in order to enable a family to tide over a financial crisis caused by the death of its wage-earner while in service. If the scheme requires that the family pension must be taken into*

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account in evaluating the merits an application, it has to be followed."

6. In this regard, the Hon'ble Supreme Court of India, ***recently on 05.09.2022***, in the case of ***Ahmednagar Mahanagar Palika vs. Ahmednagar Mahanagar Palika Kamgar Union*** reported in ***[2022 LiveLaw (SC) 739]***, wherein in paragraph-8 of its judgment, reiterated the principles to be adopted for providing appointment on compassionate grounds as under:-

> *"8. Even otherwise, such an appointment to the heirs of the employees on their retirement and/or superannuation shall be contrary to the object and purpose of appointment on compassionate grounds and is hit by Article 14 of the Constitution of India. As observed and held by this Court in a catena of decisions, compassionate appointment shall always be treated as an exception to the normal method of recruitment. The appointment on compassionate grounds is provided upon the death of an employee in harness without any kind of security whatsoever. The appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters*

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including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. No one can claim to have a vested right for appointment on compassionate grounds. Therefore, appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement. If such an appointment is permitted, in that case, outsiders shall never get an appointment and only the heirs of the employees on their superannuation and/or retirement shall get an appointment and those who are the outsiders shall never get an opportunity to get an appointment though they may be more meritorious and/or well educated and/or more qualified."

7. Even in yet another recent judgment of the Hon'ble Supreme Court in the case of ***CENTRAL BANK OF INDIA vs. NITIN*** reported in [***2022 LiveLaw (SC) 690]*** , wherein in paragraphs 20 and 21, it has been held as under:-

"20. It is well settled that compassionate appointment is an exception to the rule of equality, which enables the dependent family

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members of a medically incapacitated employee who has no option, but to retire, or a deceased employee, to tide over the immediate crisis caused by the incapacitation or death of the breadwinner. Compassionate Appointment excludes equally or more meritorious candidates, much in need of a job, from the zone of consideration. Consideration for compassionate appointment must, therefore, be strictly in accordance with the prevalent rules for compassionate appointment applicable to the deceased/prematurely retired employee.

21. In this case, there is a financial criteria of eligibility for compassionate appointment under the Compassionate Appointment Scheme. Rules which provide for a financial criteria for appointment on Compassionate ground are valid and lawful rules which have to be construed strictly, as otherwise the quota reserved for compassionate appointment would be filled up excluding others who might be in greater and/or far more acute financial distress."

8. The petitioner submitted an application seeking appointment after a

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lapse of about ten years from the date of the death of the deceased employee. Now 21 years lapsed from the date of the death of the deceased employee. Thus long delay being a ground to reject the claim for compassionate appointment, this Court do not find any acceptable reason for the purpose of considering the relief as the compassionate appointment can never be claimed as an absolute right by the legal heirs of the employee. Therefore, the writ petition stands dismissed. No costs.

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Index : Yes / No
Speaking order / Non-Speaking order

To

The District Collector,
Office of the District Collector,
Cuddalore District,
Cuddalore.

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S.M.SUBRAMANIAM, J.

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