



W.P.No.22330 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.07.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22330 of 2015

S.Ram Kumar

...Petitioner

Vs.

1.The Director of School Education,
College Road,
Chennai – 6.

2.The Joint Director of School Education (Personnel),
O/o.The Director of School Education,
Chennai – 6.

3.The Chief Educational Officer,
Cuddalore – 1,
Cuddalore District.

4.The District Educational Officer,
Virudhachalam,
Cuddalore District.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records connected in Ni.Mu.No.6091/A1/2008 dated 12.11.2009 of the 4th respondent and Moo.Mu.No.39644/J1/2015 dated 10.09.2015 passed by the 1st Respondent



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quash the same and direct the respondents to appoint the petitioner in any one of the post on compassionate ground.

(Prayer amended Vide Order dated 24.02.2021 made in M.P.No.2/2015 in W.P.No.22330/2015)

For Petitioner	: Mr.S.N.Ravichandran For Mr.K.Sannjay
For Respondents [For R1 to R4]	: Mr.M.Bindran Additional Government Pleader

ORDER

The relief originally sought for in the present writ petition was amended subsequently and accordingly, the impugned order dated 12.11.2009 and the order passed on 10.09.2015 are under challenge in this writ petition. Further, a direction is sought for to appoint the petitioner on compassionate grounds.

2. The writ petitioner states that his father was working as PG Teacher at Government Boys Higher Secondary School, Tittagudi and he died on 01.12.1991, while he was in service. The petitioner states that on account of the sudden death of his father, the family was in indigent circumstances and his elder sister Mrs.Barani submitted an application to



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the respondent, seeking Compassionate appointment in the year 1993. No action was taken by the respondents immediately and the elder sister of the writ petitioner got married on 15.09.1994. Thereafter, another sister of the writ petitioner Smt.Valli, submitted an application seeking appointment on compassionate ground on 30.11.1998. The said application was also not considered and she also got married on 10.09.2000.

3. The petitioner during the relevant point of time was a minor, more specifically, at the time of death of his father and after two applications for compassionate appointment was filed by these two sisters, he preferred an application, seeking appointment on 11.02.2002, after a lapse of about 11 years from the date of death of his father.

4. The said application was rejected after a lapse of four years by the District Educational Officer, Virudhachalam on 18.04.2006. The application was rejected on the ground that the family of the writ petitioner was not in indigent circumstances. Challenging the said order, the writ petitioner filed W.P.No.21369 of 2008 and a final order was passed on 19.08.2009, granting liberty to the writ petitioner to approach the respondents for



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compassionate appointment and in the event of any such application, it is to be considered by the respondents on merits and in accordance with law.

Once again, the respondents rejected the application submitted by the petitioner on 12.11.2009 on the ground that the family of the writ petitioner was not in indigent circumstances. The petitioner preferred an appeal before the higher authority and thereafter, on 13.05.2015, again, the petitioner made an appeal to the first respondent and the said appeal was rejected during the pendency of the writ petition on 10.09.2015. Thus, the petitioner amended the relief in the writ petition.

5. The learned counsel for the petitioner mainly contended that the reasons stated in the order impugned passed in the year 2015 is unacceptable, in view of the fact that the penurious circumstances prevailing in the family of the writ petitioner was not properly enquired into. It is contended that the indigent circumstances, which is vital for the purpose of considering the application, seeking compassionate appointment was not scrutinized properly. The family of the writ petitioner is still in penurious circumstances and therefore, the case of the writ petitioner is to be considered for compassionate appointment.



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6. The learned counsel for the writ petitioner relied on the judgment of the Hon'ble Division Bench dated 26.11.2019 in W.A.No.4062 of 2019, wherein, the Court directed that the indigent circumstances is to be assessed by conducting a Field verification. Therefore, the case of the writ petitioner is also to be considered for the purpose of conducting Field verification to ascertain the indigent circumstances of the family.

7. The learned Additional Government Pleader appearing on behalf of the respondents objected the said contention by stating that the petitioner submitted an application, after a lapse of 11 years from the date of death of the deceased employee. As per the terms and conditions of the scheme of compassionate appointment, the application must be submitted within a period of three years from the date of death of the employee.

8. However, by way of reply, the learned counsel for the petitioner states that the three years time limit was not prevailing during the relevant point of time in the year 1991, when the employee died.



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9. The learned Additional Government Pleader further contended that the mother of the writ petitioner had not initially submitted an application, seeking compassionate appointment. Two daughters of the deceased employees submitted applications during the year 1993 and 1998 respectively. When the first application was in process, the elder daughter of the writ petitioner got married and therefore, became ineligible. The second daughter, who submitted an application in the year 1998 was also got married in the year 2000 and she also became ineligible. Under those circumstances, after a lapse of many years, the case of the writ petitioner cannot be considered for compassionate appointment.

10. The respondents in their counter, has stated that the Tahsildar issued a certificate on 21.12.2001, stating that the family is in indigent circumstances. However, the authorities competent have not accepted the said certificate since the deceased Government servant died on 01.12.1991. However, the certificate of the Tahsildar was issued only on 21.12.2001, after a lapse of about 10 years from the date of death of the deceased employee.



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11. The learned Additional Government Pleader relying on the above position, made a submission that the indigent circumstances aroused on account of the sudden death of an employee is to be considered and the indigent circumstances, after several years, if established, cannot be considered for the purpose of providing appointment on compassionate grounds, more so, after a lapse of several years.

12. The learned counsel for the respondents relied on the judgments of the Hon'ble Supreme Court of India in the case of ***State of Haryana and others Vs. Rani Devi and another***, wherein the Apex Court made an observation that *“It was also impressed that appointments on compassionate ground cannot be made after lapse of reasonable period which must be specified in the rules, because the right to such employment is not a vested right which can be exercised at anytime in future.”* He further relied on the judgment in the case of ***Sanjaykumar Vs. State of Bihar and others***, reported in ***AIR 2000 SC 2782***, wherein the Apex Court observed that *“There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years.”*



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13. Based on the Hon'ble Supreme Court of India judgments, the Hon'ble High Court also decided several writ petitions and the benefit of scheme of compassionate appointment was not extended to the legal heirs of the deceased employee after several years.

14. Considering the arguments as advanced by the respective learned counsels appearing on behalf of the *lis* on hand, question arises, whether the indigent certificate obtained by the petitioner is to be accepted for the purpose of providing Compassionate appointment or not.

15. As pointed out by the respondents, the deceased employee died on 01.12.1991 and a certificate was issued by the Tahsildar after a lapse of 10 years, on 21.12.2001. On account of the long delay in getting indigent certificate, the relevancy of the indigency has lost. The relevancy of the indigence must be considered with reference to the date of death of the deceased employee and it is not as if the indigent circumstances, if at all aroused after several years from the date of death of the deceased employee, then such indigent circumstances can be related to the death.



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16. 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. It is not as if one appointment is to be provided to the family of the deceased employee. The indigency must be the criteria for the purpose of considering the application. In the present case, the indigent certificate of the Tahsildar obtained after 10 years cannot be relied upon for the purpose of considering the case of the writ petitioner for compassionate appointment. Further, it is not made clear, whether the Tahsildar has conducted a thorough field enquiry in respect of the indigent circumstances of the family. Simple consideration of the fact reveals that the employee died in the year 1991. In the year 1993, the elder daughter of the petitioner submitted an application and she got married in the year 1994. The another daughter of the deceased employee filed an application in the year 1998 and she also got married in the year 2000. Thereafter, the writ petitioner submitted an application in the year 2002. 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



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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.

17. 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. It is not as if the scheme is contemplated to provide one appointment to the family of the deceased employee.

18. Scheme of compassionate appointment is in violation of the Articles 14 and 16 of the Constitution of India. Scheme being violative of the equality clause enunciated under the Constitution, it is to be implemented strictly in accordance with the terms and conditions. All appointments are to be made strictly in accordance with the rules. Compassionate appointment is an exception and a concession. Scheme of compassionate appointment is not an absolute right, so also, concession can never be claimed as a matter of right. Excess appointment on compassionate



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ground would result in inefficiency in public administration. No selection is conducted. Rule of reservation has not been followed. Merit assessments are not made. That exactly is the reason why the Courts have held that the scheme of compassionate appointment is a concession and violative of Articles 14 and 16 of the Constitution of India. No selection procedures are followed for such compassionate appointments, the scheme is restricted by the Government itself in order to provide appointment only to the eligible candidates, who all are able to establish the genuinity to claim compassionate appointment.

19. This Court is of the considered opinion that appointments on compassionate grounds are streamlined by the Government, so as to provide appointment only on genuine grounds. Even any one of the legal heirs are employed in Government service or in private service and an earning member, then the family of the deceased employee is not eligible for Compassionate appointment.

20. In the present case, the father of the writ petitioner died in the year 1991. Now 31 years lapsed. In the event of providing appointment on



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compassionate ground, now after a lapse of 31 years from the date of death of the deceased employee, then the very purpose and object of the scheme would be defeated.

21. Even recently, the Honourable Supreme Court in the case of **State of Uttar Pradesh and Others vs. Premlata [(2022) 1 SCC 30]**, has made observations in respect of implementation of the scheme of compassionate appointment and the relevant portion of the observations are extracted hereunder:

“8. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in State of Karnataka vs. V.Somayashree [(2021) 12 SCC 20], had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C.Santhosh vs. State of Karnataka [(2020) 7 SCC 617], this Court has summarized the principle governing the grant of appointment on



compassionate ground as under:

10.1. That the compassionate appointment is an exception to the general rule;

10.2. That no aspirant has a right to compassionate appointment;

10.3. The appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

10.4. Appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

10.5. The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

9. As per the law laid down by this Court in a catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to



a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

9.1. In the case of H.P. v. Shashi Kumar [(2019) 3 SCC 653], this Court in paras 21 and 26 had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this Court in Govind Prakash Verma vs. LIC [(2005) 10 SCC 289], it is observed and held as under:

“21. The decision in Govind Prakash Verma, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No



other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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



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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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more



destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

“26. The judgment of a Bench of two Judges in Mumtaz Yunus Mulani vs. State of Maharashtra [Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

22. Thus, the judgements relied on by the petitioner are of no



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application and cannot be taken into consideration with reference to the facts and circumstances of the present case.

23. Even the Hon'ble Supreme Court of India held that long delay is also a ground to reject the appointment on compassionate ground. In the present case, almost thirty one years lapsed from the date of death of the deceased employee and now after a lapse of three decades, the scheme of compassionate appointment cannot be provided to the writ petitioner and furthermore, the indigent certificate produced after a lapse of 10 years from the date of death of the deceased employee cannot be relied upon for the purpose of considering the case of the writ petitioner for compassionate appointment. Even in such circumstances, a factual inference is to be drawn that the penurious circumstances, if at all aroused, it became vanished. Thus, viewing in any angle, the case of the writ petitioner now after a lapse of 31 years cannot be considered.



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24. Accordingly, the writ petition stands dismissed. No costs.

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Speaking order: Yes
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O/o. The Director of School Education,
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S.M.SUBRAMANIAM, J.

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