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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.04.2022
CORAM :
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.1106 of 2022

S.Kumar

... Appellant/Petitioner

vs.

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

2. The Secretary,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 26.11.2021 passed by this Court in W.P.No.5855 of 2014.

Prayer in W.P.No.5855 of 2014.

Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings No.SCT5/1279/2014/GA dated 13.02.2014 and quash the same and consequently direct the respondents to appoint the petitioner forthwith on compassionate ground in the post of clerk in Chennai Port Trust and pass orders.

For Appellant : Mr.K.Raja

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Aggrieved by the order dated 26.11.2021 passed by the learned Single Judge in W.P.No.5855 of 2014, the Writ Petitioner has come up with the present Writ Appeal.

2. Before the learned Single Judge, it was the case of the Writ Petitioner that, his father, who was employed as Riveter Grade-I in Chennai Port Trust, died on 17.02.2001 and within a span of less than a year, he made an Application to the



Respondent/Port Trust on 29.03.2001 seeking appointment on compassionate ground and the same was accepted by the Port Trust vide D.R.No.2538/2001, dated 01.11.2011.

3. It was contended by the Writ Petitioner before the learned Single Judge that, instead of granting appointment on compassionate ground, the Respondent/Port Trust pressurized him to accept a sum of Rs.3,85,000/- as compensation in lieu of compassionate appointment. Thereafter, on coming to know that, legal heirs of juniors to his father were granted appointment on compassionate ground by overlooking his seniority, the Writ Petitioner repaid the said amount by a Demand Draft bearing No.508522, dated 03.02.2014. As the said Demand Draft was returned by the Respondent/Port Trust vide impugned order dated 13.02.2014, the Writ Petitioner filed W.P.No.5855 of 2014. It was also the case of the Writ Petitioner before the learned Single Judge that, a similarly placed person viz. one Jayachitra got appointment on compassionate ground and hence, his case may also be considered for grant of appointment on compassionate ground.

4. As the Writ Petitioner's claim seeking compassionate appointment was made beyond the prescribed period of three years and as he had accepted the compensation amount granted by the Respondent/Port Trust in lieu of compassionate appointment, finding no ground to interfere with the impugned order in question, the learned Single Judge dismissed the Writ Petition in W.P.No.5855 of 2014.

5. In support of his stand, learned counsel for the Appellant has relied on a decision of the Apex Court in the case of Balbir Kaur vs. Steel Authority of India Ltd. reported in CDJ 2000 SC 335, relevant portion of which, is extracted hereunder:

"12. Mr.Bhasme, learned Advocate appearing for the Steel Authority contended that the Family Benefit Scheme was introduced on 21st November, 1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the Management, could avail of the Scheme by depositing the lumpsum Provident Fund and Gratuity amount with the Company in lieu of which the Management would make monthly payment equivalent to the basic pay together with Dearness Allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr.Bhasme further contended that adaptation of this Family Benefit Scheme



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was meant to provide an assured or regular income per month, while the bulk amount deposited by way of Provident Fund and Gratuity with the Management remained intact. Mr. Bhasme contended that consequently on deposits as above, with the Management, the employee's family could avail of pay upto normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently, these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees' Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But, in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lumpsum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lumpsum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."

6. Heard the learned counsel for the Appellant and perused the material documents available on record.

7. On going through the papers, we find that, the Appellant/Writ Petitioner, even before making an Application to the Respondent/Port Trust seeking appointment on compassionate ground, has accepted a sum of Rs.3,85,000/- as compensation from the Respondent/Port Trust in lieu of compassionate appointment. Though, the Writ Petitioner repaid the said amount by way of a Demand Draft bearing No.508522, dated 03.02.2014, the



Respondent/Port Trust returned the same by way of the impugned order. Also, there is no iota of evidence as to whether seniors to the Writ Petitioners as per the seniority list, who claimed appointment on compassionate ground, have accepted the compensation granted by the Port Trust and given up the job. In any event, accepting compensation in lieu of compassionate appointment and thereafter contending that the amount has been returned to the Port Trust and that, persons lower in the seniority list have been granted appointment on compassionate ground, does not appear sound.

8. Though it is the contention of the learned counsel for the Appellant/Writ Petitioner that, the ratio laid down by the Apex Court in Balbir Kaur's case (supra) that, appointment on compassionate ground has to be made as per seniority and that, by-passing seniority would change the purpose of extending the benefit of compassionate appointment, the said decision may not be applicable to the case on hand, as it does not pertain to acceptance of compensation in lieu of compassionate appointment.

9. Compassionate appointment comes into operation only after the demise of the person who is in employment. Undoubtedly, payment of terminal benefits due to a deceased employee cannot be equated to that of payment of compensation to his legal heirs. In the case on hand, de hors payment of terminal benefits due to the father of the Appellant/Writ Petitioner, the Respondent/Port Trust has also granted compensation of a sum of Rs.3,85,000/- in lieu of compassionate appointment and the Appellant/Writ Petitioner has also accepted the same, initially. In other words, by accepting the compensation granted by the Respondent/Port Trust, the Appellant/Writ Petitioner has given up the job on compassionate ground. While so, the Appellant/Writ Petitioner cannot, thereafter come with a plea that, he is entitled to compassionate appointment. Hence, on this score, the Appellant/Writ Petitioner is not entitled to the relief sought for by him and we do not find any reason to interfere with the order passed by the learned Single Judge.

Accordingly, the Writ Appeal fails and stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

(aeb)



To:

1. The Chairman, Chennai Port Trust,
Rajaji Salai, Chennai 600 001.
2. The Secretary, Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

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W.A.No.1106 of 2022

AK (CO)
CT 27/05/2022