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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.5518 of 2022
and
W.M.P No.5605 of 2022

K.Suresh

... Petitioner

vs.

1. The State, rep. by
Secretary to Government
Department of Education
Secretariat
Fort St. George
Chennai-600 009.
2. The Director of School Education
College Road
Nungambakkam
Chennai-600 006.
3. The District Educational Officer
District Educational Office
Virudhachalam
Cuddalore District.
4. The Head Master
Government Boys Higher Secondary School
Thittakudi
Cuddalore District.
5. The Chief Educational Officer
Cuddalore District
Cuddalore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 5th respondent made in Na.Ka.No.010191/A3/2014 dated 10.12.2021 and quash the same and consequently direct the respondents to provide compassionate appointment to the post of Junior Assistant either in the 4th respondent school or in any other schools.



For Petitioner : Mr.Vijaya

For RR1, 2, 3 & 5 : Mr.V.Nanmaran
Additional Government Pleader

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O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 5th respondent made in Na.Ka.No.010191/A3/2014 dated 10.12.2021 and quash the same and consequently direct the respondents to provide compassionate appointment to the post of Junior Assistant either in the 4th respondent school or in any other schools.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The case of the writ petitioner is that the petitioner's father S.Kaliamurthy worked as Weaving Teacher in the 4th respondent school and while he was in service, he died on 04.02.2001, leaving behind the petitioner's mother Saraswathi and sisters Sumathi, Gomathi and brothers Arun and Sanasi as his legal heirs. Thereafter, the petitioner made a request before the respondents for appointment as Junior Assistant on compassionate ground. At the time of submission of his application, the other legal heirs had given No Objection letters to the respondents authority to give appointment for the petitioner. On receipt of such application, the 3rd respondent has rejected the same on the ground that there was a ban for appointment by the Government. After the lift of the ban, the 4th respondent recommended the petitioner's case to the 3rd respondent to provide compassionate appointment. Again, by proceedings dated 27.04.2006, the 3rd respondent rejected the application on the ground that he has not submitted the legal heir certificate and at the time of submission of application, the petitioner has completed only Higher Secondary Course and he did not ask suitable post as per qualification. Thereafter, the petitioner has submitted the legal heir certificate obtained from the Tahsildar, Thittakudi dated 20.07.2006 disclosing the fact that his sister K.Gomathi was unemployed from the date of death of his father till the date of her marriage. Thereafter, the 3rd respondent recommended the petitioner's case to the 2nd respondent for providing employment on compassionate ground and again, the 3rd respondent by his proceedings dated 18.05.2007, rejected the request made by the petitioner. Again, the 4th respondent addressed a letter to the 3rd respondent to provide



appointment on compassionate ground and the same was rejected. As against the said rejection order, the petitioner filed W.P No.22197 of 2014 before this Court and the same was allowed on 19.07.2021. Thereafter, the impugned order has been passed by the 5th respondent rejecting the claim of the petitioner on the ground that the Government has passed G.O. Ms. No.18 Labour and Employment Department dated 23.01.2020. Hence the instant writ petition.

4. As per the aforesaid G.O Ms. No.18, one of the family members is eligible for the employment under the compassionate ground after the death of the employee. On considering the factual position, it reveals that the petitioner's sisters namely, Sumathi, Gomathi and brother, namely Arun were working respectively in the school and other Government department. The said fact has not been disputed by the petitioner. The petitioner has raised the grounds in the affidavit that the brothers and sisters got employment based on their qualification and attending interviews at a later point of time and their job is nothing to do with the genuine request to provide compassionate appointment. The reasons stated by the petitioner has not been accepted. The respondent department has to consider the appointment on compassionate ground only based on the government order. However, in G.O Ms. No.18 Labour and Employment Department dated 23.01.2020, clause-v, it is stated as follows:

(v) The compassionate ground appointment will not be considered.

(a) In case any person of the deceased Government Servant's family is in regular employment in Government/Private Enterprises.

(b) The wife of the deceased Government Servant who applied for appointment for herself is remarried.

Following the aforesaid Government Order, the respondent department has rightly rejected the claim of the petitioner seeking for appointment on compassionate ground.

5. 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



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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."

6. 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."

7. 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



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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."

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



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"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 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."

The aforesaid object of the claim was provided for the employment only due to the death of the employee while he was in harness and supporting the family members to maintain them. In the present case on hand, the deceased employee died in the year 2001. After a lapse of 21 years, the request of the petitioner seeking for such employment will not be considered by this Court, in the light of the aforesaid decision of the Hon'ble Supreme Court reported in [(2019) 15 SCC 613],.



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9. Considering the facts and circumstances of the case and the decisions cited supra, prima facie, there is no merits in this petition and therefore, this Court is not inclined to interfere with the order passed by the respondent department.

10. In fine, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

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Cuddalore.

+1cc to Mr.Vijaya & Anandh, Advocate SR.No.16760

W.P.No.5518 of 2022

MG (CO)
GMY (12/04/2022)