



W.P.No.20598 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20598 of 2016
and W.M.P. No.17702 of 2016

S.Shivam

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
St. Fort,
Chennai – 600 009.

2.The Director of School Education,
DPI Complex,
Chennai – 5.

3.The District Education Officer,
Namakkal District,
Namakkal.

... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 3rd respondent herein in his proceedings dated Na.Ka. No.5359/A1/2013 dated 01.12.2014 and quash the same and further direct the respondents to consider the petitioner's appointment on compassionate ground.



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For Petitioner : Mr.S.Sundaresan
For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader
for R1 to R3

ORDER

The order of rejection rejecting the claim of the writ petitioner for compassionate appointment in proceedings dated 01.12.2014 is under challenge in the present writ petition.

2.The petitioner states that his father Late.Mr.Chella Subramanian was working as a Secondary Grade Teacher in the Government High School and died on 14.12.1995, while he was in service. The deceased employee died leaving behind the mother of the petitioner and five sisters as dependence. The petitioner states that his eldest sister got married even during the life time of his father in the year 1994 and the other sisters Smt.Gandhi, Smt.Vimala, Smt.Padma and Smt.Gajalakshmi married during the years 1998, 2001 and 2002 respectively. The petitioner submitted an application on 23.02.1996 seeking employment on compassionate grounds. Since, the application was not considered and no order of



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appointment was issued, the petitioner filed W.P.No.30049 of 2005 and this Court passed an order on 23.02.2012, directing the authorities to reconsider the case of the writ petitioner for appointment on compassionate ground. Pursuant to the orders of the High Court, the authorities had reconsidered the issue and found that the petitioner is not eligible for compassionate appointment and again they rejected the case. The petitioner once again filed W.P.No.20379 of 2013 and this Court passed an order on 08.09.2014, directing the authorities to consider the representation submitted by the writ petitioner and pass orders, within a period of four weeks. Pursuant to the said directions, once again the case of the writ petitioner was rejected in proceedings dated 01.12.2014 and the said order is challenged in the present writ petition.

3.The learned counsel for the petitioner made a submission that the petitioner twice filed writ petitions on earlier occasions and on both the occasions, this Court set aside the order of rejection and directed the authorities to consider the application submitted by the writ petitioner and in spite of the directions, the authorities third time also rejected the application submitted by the writ petitioner seeking appointment on compassionate grounds.



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4.This is exactly, the reason why this Court has held that the directions to consider the representation would not cause any justice. Contrarily, the litigants are back again to the Court for repeated adjudication of the issues. Such a situation would create frustration in the minds of the litigants. That apart, it will result in a harassment every litigant approaching the Court of law expect that the Court would decide the issues on merits and in accordance with law. Thus, issuing a direction to consider the representation will not provide any justice to the litigants and this Court is of the considered opinion that the said directions had not helped the petitioner, rather, resulted in rejection of the claim on the petitioner on the third occasion. By the time, the petitioner is aged about 44 years and therefore, he became over aged.

5.Let us consider the reason for the rejection of the application. The order impugned states that the deceased employee died on 14.12.1995 and at that point of time several legal heirs were there. The wife of the deceased employee is receiving a family pension and maintaining herself. The other five sisters have completed higher education like B.Ed., M.Phil., and got married and living



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separately along with their spouses. On assessment of the family circumstances, the authorities formed an opinion that the family was not in indigent circumstances. The authorities had drawn the factual inference that the deceased employee died in the year 1995 and the family is proceeding with their normal life for about 19 years and they are having sufficient income for the purpose of maintenance of family. On verification, the authorities have found that the indigent circumstances do not prevail in the family and accordingly, rejected the claim of the writ petitioner.

6. The indigent circumstances is the vital aspect which is to be considered for the purpose of providing appointment on compassionate ground. The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on the sudden death of the employee. Therefore, the penurious circumstances with reference to the death is to be ascertained. When the family consists of seven legal heirs and five legal heirs got married and settled and earning members and wife of the deceased employee is receiving a reasonable amount of family pension, the authorities competent arrived a conclusion that the family is not in indigent circumstances. In this regard, the Hon'ble Supreme Court



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has categorically held that the scheme of compassionate appointment is to be implemented strictly in its terms and conditions.

7. 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 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



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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 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



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efficient public administration.

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8. 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.

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

10. 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 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.”



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11. 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 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



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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.”

12. Thus, this Court do not find any infirmity in respect of the reasons stated in the order impugned. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Internet : Yes
Speaking order
SSR



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S.M.SUBRAMANIAM, J.

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