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W.P.No.21163 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.21163 of 2016

Mrs.Indirani

... Petitioner

Vs.

1.The Chief Engineer (General)
Highways Department,
Chepauk,
Chennai – 600 005.

2.The Assistant Divisional Engineer,
Highways Department,
Thiruvallur District.

3.The Divisional Engineer
Highways Department,
Thiruvallur District.

... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relevant to the impugned order in Letter.No.779/2009/AJ/ dated 14.03.2013 passed by the 3rd respondent and quash the same as illegal, improper, arbitrary and against the rule of law and principles of natural justice and to direct the 1st respondent to appoint the



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petitioner's daughter as Gang Mazdoor or as Junior Assistant in the respondents department under the compassionate ground.

For Petitioner : M/s.J.Bhavani
For Respondents : Mrs.R.Anitha
Special Government Pleader
for R1 to R3

ORDER

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

2.The petitioner states that her husband Late Mr.M.Chittirai served as a Road worker in Tamil Nadu Highways Department and died on 04.02.1998, while in service. The petitioner submitted an application on 25.01.1999, but the said application was rejected on the ground that the petitioner did not possess the minimum educational qualification for appointment in the Government Department. During the relevant point of time, the daughter of the writ petitioner was minor and studying in a School. Thus, on attaining the age of majority, the petitioner again submitted a representation on 14.03.2008 to provide appointment to her daughter



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Selvi.C.Latha. The said application was also rejected by the respondents through impugned order dated 14.03.2013. The respondents rejected the application to provide appointment to the daughter of the deceased employee on the ground that the application itself was submitted after a lapse of about ten years from the date of the death of the deceased employee.

3.The purpose and object of the scheme of the compassionate appointment is to mitigate the circumstances arising on account on the sudden death of an employee. It is not the scheme where one appointment is to provide to the family of the deceased employee. Scheme is to be implemented strictly in accordance with its terms. Scheme being violative of Articles 14 and 16 cannot be expanded so as to deprive the fundamental rights of all other eligible citizen who all are aspiring to secure public employment through open competitive process. In the present case, the petitioner was found not eligible for appointment. Since, her Daughter submitted an application after a lapse of 10 years from the date of the death of the deceased employee. The employee died in the year 1998, as of now about 24 years lapsed from the date of the death of the deceased employee her application cannot be considered. Even a long delay is also a ground to reject the appointment on



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compassionate ground. The long delay would result in drawing a factual inference that the penurious circumstances aroused on account of the sudden death became vanished.

4. 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



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said legal heir became ineligible, it is not as if that other 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 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



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the Constitution mandates an efficient public administration.

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5.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.

6.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.”

7. 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.”

8. Even in yet another recent judgment of the Hon'ble Supreme Court in the



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case of **CENTRAL BANK OF INDIA vs. NITIN** reported in [2022 *LiveLaw*

WEB (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 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



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reserved for compassionate appointment would be filled up excluding others who might be in greater and/or far more acute financial distress.”

9. For all these reasons and circumstances, this Court cannot form an opinion that the family was in indigent circumstances during the relevant point of time, when the deceased employee died. Therefore, the reasons stated in the impugned order cannot be said to be perverse.

10. Accordingly, the Writ Petition stands dismissed. No costs.

27.09.2022

Index : Yes
Internet : Yes
Speaking order
SSR



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- To
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 - 2.The Assistant Divisional Engineer,
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S.M.SUBRAMANIAM, J.

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