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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.No. 875 of 2022

A.Nirmal Kumar ... Appellant/Petitioner

-vs-

1. The Director,
Social Welfare Department,
Saidapet, Chennai-15.

2. The Child Development Project Officer (Rural),
Kanchipuram District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 03.03.2022 passed in W.P.No.3827 of 2022 and to allow the above Writ Appeal.

Prayer in WP.No.3827 of 2022: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order of the First Respondent dated 18.06.2021 made in Na.Ka.No.3575/niru.4(3)/2021 and to quash the same and consequently direct the Respondents to provide compassionate appointment to the Petitioner for the death of his mother Prema, Wife of Ariyanayagam who died on 19.12.2016 in a suitable post.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.Abhishek Moorthy
Government Advocate

J U D G M E N T

S.VAIDYANATHAN., J
and
N.MALA., J

This Writ Appeal has been filed against the order dated 03.03.2022 passed in W.P.No.3827 of 2022 in dismissing the Writ Petition.



2. The case of the Appellant/Writ Petitioner in brief are as follows:

(i) The mother of the Appellant viz., Prema, while working as Child Development Project Officer at Block Development Office, Sri Kaveripakkam, Kanchipuram passed away on 19.12.2016 leaving behind the Appellant and his sister viz., Gomathi, as her legal representatives. According to the Writ Petitioner, his father predeceased his mother and he is dependent on his mother. He completed B.Com degree course and now temporarily working in a Private Bank on contract basis. The sister of the Petitioner is married and living along with her husband. In that backdrop, the Appellant made an application dated 15.11.2019 for compassionate appointment, but the same was rejected by the 1st Respondent on the ground that the Appellant is already in employment. Challenging the same, the Writ Petition in W.P.No.3827 of 2022 was filed.

(ii) The learned Single Judge, vide order dated 03.03.2022, by citing several Judgments of the Hon'ble Apex Court has dismissed the Writ Petition with the following observations:

"In view of the aforesaid binding decisions with specific reference to the factual backdrop in the instant case, it is not possible to countenance the claim of the petitioner for compassionate appointment. It is evident from the death certificate of the mother of the petitioner, who is the deceased employee, that she was 57 years of age at the time of death and was on the verge of her retirement from service. Had she not died before retirement, there would be no scope for the petitioner to apply for compassionate appointment. Further, there are no other members in the family who are dependent on the income of the deceased employee. The petitioner, who is now 32 years old, had made the application for compassionate appointment almost after three years after the death of his mother and now employed though it is claimed to be temporary without any security for its continuance. It is apparent that the Petitioner has been able to tide over the crisis with the passage of time and if any indulgence is now shown brushing aside the germane aspects highlighted in the judicial decisions referred supra, it would unwittingly tantamount to unduly favouring the Petitioner to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced. Viewed



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from that perspective, there does not appear to be any infirmity in the impugned order passed by the First Respondent requiring interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution."

3. Challenging the same, the present Writ Appeal has been filed.

4. The learned counsel appearing on behalf of the Appellant/Writ Petitioner submitted that the application for compassionate appointment has been made by the Petitioner well within time and hence the case of the Petitioner has got to be considered for compassionate appointment, but without considering the same, the learned Single Judge has rejected the prayer of the Writ Petitioner on the ground that the Writ Petitioner does not undergo any financial crisis. He further submitted that in the present case on hand, the Petitioner who is aged 32 years and employed on temporary basis is entitled for the relief of compassionate appointment.

5. The learned Government Advocate appearing for the Respondents contented that even though the application has been made well within time, in terms of G.O.Ms.No.18, Labour and Employment (Q1) Department dated 21.03.2020, if the present family income is more than 2 lakhs per annum, there is no need to consider the grant of appointment on compassionate ground and as the Appellant/Writ Petitioner is also presently working in the Bank drawing a salary of nearly Rs.2.5 lakhs per annum, he is not entitled for compassionate appointment. Hence, the order of the learned Single Judge is perfectly in order and the same does not warrant interference.

6. In reply, the learned counsel appearing for the Writ Petitioner submitted that when the application has been made well within a period of three years, the income earned on temporary employment cannot be taken into account for depriving compassionate appointment. He further submitted that Petitioner is not a permanent employee of the Bank and therefore, his request cannot be blindly denied. He further submitted that the order of the learned Single Judge needs to be interfered with on that ground.

7. Heard both sides. Perused the records.

8. It is not in dispute that the Writ Petitioner made an



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application on 15.11.2019 after the demise of his mother on 19.12.2016, which was admittedly made within the period of three years. It is no doubt true that the compassionate appointment is not a matter of right and is intended to enable the family of a deceased employee to tide over the crisis which is caused on the death of an employee, while in harness as per the judgment of the Hon'ble Apex Court in the case of Government of India Vs. P.Venkatesh reported in 2019 15 SCC 613. It is also no doubt true that the Writ Petitioner is earning more than two lakhs income per annum and the Petitioner is working only on temporary basis. A reading of G.O.Ms.No.18 clearly shows that permanent income should be taken into account for deciding the issue of compassionate appointment. Even though G.O.18 has been passed subsequent to the death of the Petitioner's mother, the said G.O. is prevalent as on date, which should be taken note of in this case. Apart from that, the Hon'ble Supreme Court in the case of M.Kendra Devi Vs. The Government of Tamil Nadu and Ors. (MANU/SC/0299/2022), has given a finding heavily against the State Government in providing compassionate appointment in Class II category. While dealing with the issue of compassionate appointment in W.P.(MD) Nos.4129, 7045, 16624 and 20786 of 2014 and W.P.(MD)Nos.19455 and 19530 of 2018 [S.Gowtham Balu vs. The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation, 144, Anna Salai, Chennai - 600 002 and others] decided on 24.09.2018, one of us (SVNJ) held that compassionate appointment should be considered only for Class-IV employment and not other posts. We are of the view that Class III post needs to be filled up only through open recruitment. Even if the person seeking compassionate appointment is overqualified, he can be considered for compassionate appointment only in Class IV post, in case the Rules prescribes the minimum and maximum qualification for Class IV post.

9. As stated supra, the Appellant has made the application within three years of limitation period and that he has also not secured any permanent job as on date. Therefore, in the considered opinion of this Court, his request for compassionate appointment should be considered favourably as per the existing norms available with the Government. Accordingly, the name of the Appellant/Writ Petitioner shall be included in the seniority list, being maintained by the Government for providing compassionate appointment, by placing him in an appropriate position, within a period of two months from the date of receipt of a copy of this order. The case of the Petitioner shall be considered as and when vacancy arises based on seniority.

In the result, the order of the learned Single Judge dated 03.03.2022 passed in W.P.No.3827 of 2022 is set aside and this



Writ Appeal is disposed of to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Director,
Social Welfare Department,
Saidapet, Chennai-15.
2. The Child Development Project Officer (Rural),
Kanchipuram District.

+1cc to M/s.C.Prabakaran, Advocate, S.R.No.29714

+1cc to the Government Pleader, S.R.No.30883

W.A.No. 875 of 2022

PMK(CO)
UMA(15/06/2022)