

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.11786 of 2022
and
W.M.P.No.11242 of 2022

J.Sabilamary

...Petitioner

Vs.

1. The Secretary,
Home Department,
Secretariat,
St.George Fort,
Chennai - 600 009.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,Chennai - 600 004.
3. The Commissioner of Police,
Greater Chennai Police,
Veppery, Chennai - 600 104.
4. The Joint Commissioner,
South Zone,
Greater Chennai Police,
St.Thomas Mount,
Chennai - 600 016.

...Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent in connection with the impugned order of rejection passed by him vide his Proceedings in Na.Ka.No.Pa.P1 (2)/the.Ma/323/2932/2020 dated 11.02.2020 and quash the same as illegal and arbitrary and consequently direct the respondents to consider the petitioner for appointment in any suitable post based on the petitioner educational qualification under compassionate ground within the time limit stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents: Mr.T.Chezhiyan
Additional Government Pleader

O R D E R

This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent in connection with the impugned order of rejection passed by him vide his Proceedings in Na.Ka.No.Pa.Pl (2)/the.Ma/323/2932/2020 dated 11.02.2020 and quash the same as illegal and arbitrary and consequently direct the respondents to consider the petitioner for appointment in any suitable post based on the petitioner educational qualification under compassionate ground within the time limit stipulated by this Court.

2. According to the petitioner, the petitioner's father namely P.John Sundararaj was working as Police Constable under the control of the 4th respondent and he died on 05.02.1994, while he was in service. Thereafter, the petitioner's mother submitted an application to the 1st respondent for compassionate appointment on account of the death of her father. The said application was rejected by the 4th respondent/department on the ground that there is a discrepancy found in her educational certificates and the said rejection order was not challenged by the petitioner before the Court of Law. Thereafter, her mother also died on 25.10.2019.

3. Thereafter, the petitioner submitted a fresh application dated 12.12.2019 to the respondents requesting them for compassionate appointment. By the impugned order dated 11.02.2022, the 4th respondent has rejected the said application on the ground that the petitioner has made an application seeking compassionate appointment after a lapse of more than 25 years and as per the Government Order in G.O.Ms.No.120, Employment Department, dated 27.06.1995, the petitioner has not submitted an application for compassionate appointment within a period of 3 years from the date of death of the Government servant. Challenging the same, she has filed the instant writ petition before this Court for the aforesaid prayer.

4. Admittedly, the petitioner has made an application dated 12.12.2019 seeking compassionate appointment after a lapse of 25 years from the date of death of her father. Apart from that, her mother submitted application seeking compassionate appointment at the earlier point of time and the said application was rejected. The said rejection order was not challenged by the petitioner's mother, while she was alive. After the death of the petitioner's mother, the present application has been submitted by the petitioner seeking compassionate appointment.

5. As per the Government Order in G.O. Ms. No.18 Labour and Employment Department dated 23.01.2020, one of the family

members is eligible for the employment under the compassionate ground after the death of the employee. But, the petitioner has not submitted the application seeking compassionate appointment within the prescribed period of three years from the date of death of the deceased employee. 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 4th respondent/department has rightly rejected the claim of the petitioner seeking for appointment on compassionate ground.

6. 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 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."

7. 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."

8. 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 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."

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

"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 1994. After a lapse of 25 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],.

10.Considering the facts and circumstances of the case and the decisions cited supra, prima facie, there is no merits in this writ petition and therefore, this Court is not inclined to interfere with the order passed by the 4th respondent/department.

11.In fine, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dm

To

1. The Secretary,
Home Department,
Secretariat,
St.George Fort,
Chennai - 600 009.

2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.
3. The Commissioner of Police,
Greater Chennai Police,
Veppery, Chennai - 600 104.
4. The Joint Commissioner,
South Zone,
Greater Chennai Police,
St.Thomas Mount,
Chennai - 600 016.

+1cc to M/s.G.Thalaimutharasu, Advocate, S.R.No.32875

W.P.No.11786 of 2022

RR(CO)
RGA(14/07/2022)