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W.P.No.28788 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.No.28788 of 2016

W.M.P.Nos.24829 of 2016 & 14032 of 2017

G.Anitha

.. Petitioner

Vs.

1.The Secretary to the Government,
Department of Labour and Employment Training,
Secretariat, Chennai – 600 009.

2.The Commissioner,
Department of Labour and Employment Training,
Guindy, Chennai – 600 032.

3.The Deputy Director/The Principal,
Government Industrial Training Institute,
North Chennai - 600 021.

.. Respondents

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 order of the second respondent *vide* Letter Na.Ka.No.24082/tho.nu.pa 4/2016 dated 02.08.2016, quash the same and consequently direct the first respondent to provide appropriate employment to the petitioner on compassionate ground in the third respondent's office.



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For Petitioner : Mr.P.Saravanan

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The order of rejection dated 02.08.2016 in Na.Ka.No.24082/tho.nu.pa 4/2016 passed by the second respondent rejecting the claim of the petitioner for compassionate appointment is under challenge in this writ petition.

2. The petitioner states that her husband late V.Gopinathan was appointed as Workshop Assistant on temporary basis. The husband of the petitioner died on 04.10.2009, while he was in service. The sudden death of the employee resulted in penurious circumstances and therefore, the petitioner submitted an application seeking appointment on compassionate ground. The application submitted by the petitioner was forwarded.

3. The petitioner further states that she has completed X standard in April 1997 and registered her name in District Employment Office at



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Chennai. The application was rejected through the impugned order by the second respondent on the ground that the husband of the petitioner died before granting the benefit of regularization and therefore, he died as a temporary employee and thus, the claim of compassionate appointment cannot be extended to the family of the deceased employee. It is specifically stated that the husband of the petitioner died on 04.10.2009 and the Government issued the order granting regularization on 03.02.2010 i.e. after the death of the husband of the petitioner and therefore, the scheme of compassionate appointment cannot be applied for the temporary employees.

4. The learned counsel for the petitioner strenuously contended that the Court has considered several cases for compassionate appointment and more specifically, by taking a lenient view. He relied on certain orders of this Court, wherein, the respondents were directed to consider or reconsider the applications submitted by the legal heirs of the deceased employee seeking appointment on compassionate ground and therefore, similar consideration has to be shown to the petitioner also.



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5. Regarding the orders relied on by the petitioner that the Courts have directed to consider the application for providing compassionate appointment, this Court has to look into the principles settled and the consequences of issuing such directions to consider the representation or otherwise.

6. The Courts are expected to decide the issues on merits at all circumstances. Merely issuing a direction to consider the cases would do no service to the cause of justice. Litigants will be back again to the Courts by way of another litigation and thus, the issues are to be settled in the interest of the parties and in the interest of justice. The growing practice is that the litigant approaching the Court are repeatedly approaching in respect of the same grievance by filing several writ petitions and contempt petitions. Such multiplicity of proceedings on the same grievance would result in harassment and the litigant may lose faith on the judicial system. Thus, the High Court cannot encourage such practice of multiplicity of litigations on the same cause or by the same litigant regarding the grievances. Once a litigation is instituted, the Court must resolve the issues by deciding the



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disputes between the parties. Then alone, the level of confidence can be maintained amongst the public at large, which is a constitutional principles.

Contrarily, the Courts issuing a direction in a routine manner without deciding the issues will certainly result in multiplicity of litigations and therefore, this Court is not inclined to issue any such direction to consider the case of the petitioner, since the respondents filed counter affidavit contesting the case. Once the respondents have appeared and contested the case by filing counter, then, the counter statements are to be taken into consideration for resolving the issues. In the event of issuing a direction to consider the representation even after filing of counter by the respondents, the respondents will quote the very same reasons stated in the counter and reject the application once again, which will cause unnecessary mental agony to the litigants. This is how the multiplicity of litigation has arisen.

7. In the present case, the respondents have not only filed counter affidavit, but, also filed additional counter affidavit dated 18.02.2021 reiterating the grounds raised in the original counter affidavit filed in the year 2017.



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8. As far as the case of the petitioner is concerned, it is not in doubt that the petitioner had lost her husband at young age and the family would be suffering. However, the fact remains that the husband of the petitioner was a temporary employee and his service was not regularized and before the grant of regularization, the husband of the petitioner died. The question arises as to whether the scope of the scheme of compassionate appointment can be expanded in order to take a lean view for the purpose of providing public employment. In the event of the Court taking a lenient view in the matter of public employment, no doubt, the same will result in unconstitutionality, as lakhs and lakhs of poor, downtrodden and meritorious candidates are longing to secure public employment through open competition process.

9. In the case on hand, the petitioner may plead that she is a poor person. However, the Constitutional Court in order to uphold social justice, which is mandate of the constitution, must ensure that all such similarly poor people get an equal opportunity in public employment by applying the rule of reservation and under priority categories. In the event of issuing a



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direction to provide compassionate appointment by this Court, undoubtedly, the other eligible persons, who are all similarly placed are denied appointments, which will result in infringement of their fundamental right of equal opportunity in public employment, which is ensured under the Constitution of India.

10. 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



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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 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



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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 efficient public administration.

11. 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.

12. Even to ascertain the indigent circumstances, the pensionary benefits are also to be taken into consideration. The Supreme Court 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 :



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“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.”



13. In this regard, the Supreme Court, **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 no.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



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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.”

14. Even in yet another recent judgment of the Supreme Court in the case of **CENTRAL BANK OF INDIA vs. NITIN** reported in [2022 **LiveLaw (SC) 690**], wherein in paragraph nos.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 reserved for compassionate appointment would be filled up excluding others who might be in greater and/or far more acute financial distress.”



15. The principles are broadly considered by the Supreme Court in

Umesh Kumar Nagpal Vs. State of Haryana and Others [(1994) 4 SCC

138], in which, the Supreme Court has ruled as follows:

“As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post.....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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on



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compassionate grounds.....It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

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”.

16. In context of the principles, this Court is of the considered opinion that the respondents 1 and 2 in the present writ petition has to look into the scheme of compassionate appointment as of prevailing in the State of Tamil Nadu and reconsider the same by taking note of the Government of India scheme of compassionate appointment and other public sector institutions including nationalized banks, insurance companies, etc. A review of the scheme is warranted on account of the fact that lakhs and



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lakhs of public servants are working in the Government of Tamil Nadu in various departments and large number of deaths are recorded and under these circumstances, the State of Tamil Nadu has to think over as to whether it is possible to provide appointment on compassionate ground to such large number of candidates, who all are the legal heirs of the deceased employees. The number of applications pending in various departments and other relevant factors are to be taken into consideration for the purpose of reviewing the scheme of compassionate appointment.

17. In the opinion of this Court, the scheme of compassionate appointment has to be restricted only to the genuine and more deserving families after conducting thorough enquiry regarding the indigent circumstances. As of now, practice prevailing in Government Departments are that Tahsildars are issuing indigent certificate without conducting proper field enquiry. Such appointments are provided by the competent authorities on many occasions on extraneous considerations. Such illegal and irregular practices have to be controlled and therefore, the respondents 1 and 2 are bound to look into the seriousness involved in public employment under the



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constitutional schemes and initiate all appropriate steps to review the scheme of compassionate appointment in a practical and pragmatic manner so as to provide employment only to the more deserving families and by strictly following the terms and conditions, which are all to be clearly stipulated. Large number of writ petitions are filed before the High Court seeking employment on compassionate ground. If the ratio of compassionate appointment increases, undoubtedly, the efficiency in public administration would be lost. Therefore, the respondents 1 and 2 are directed to look into the consequences and the repercussions involved in compassionate appointments and take all appropriate actions and review the scheme and ensure that the object and the purpose of the scheme is met with. 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. As the scheme of compassionate appointment is being in force for several years and now, it is being abused or misused by several persons, despite the fact that they are having sources of income. In this context, the respondents 1 and 2 are bound to reconsider the entire scheme of compassionate appointment and initiate all appropriate actions.



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18. As far as the present writ petition is concerned, the husband of the petitioner died as a temporary employee and the scheme of compassionate appointment cannot be applied for the family members of the temporary employees and thus, the relief of appointment on compassionate ground cannot be granted to the petitioner. More so, the employee died in the year 2009 and already 13 years lapsed.

With the above observations and directions, this writ petition stands dismissed. No costs. Connected W.M.Ps. are closed.

For reporting compliance, post on 27.10.2022.

29.09.2022

Index: Yes
Speaking Order
nsd



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S.M.SUBRAMANIAM, J.

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