



W.P.No.13763 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13763 of 2018

U.Poonthamizh

..

Petitioner

Vs.

1. Tamil Nadu State Transport Corporation (Salem) Ltd.
Rep by its General Manager
Dharmapuri Region, Salem.

2. The Superintendent
(Industrial Relations), Salem.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records of the first respondent in their proceedings vide Letter No.Ref.No.PA1/113751/TNSTC/DPI/2017 dated 20.09.2017 relating to rejection of the petitioner's application for appointment on compassionate grounds and quash the same and direct the first respondent to consider and pass orders for appointment on compassionate grounds on the application dated 21.07.2009, 04.01.2014 and 21.08.2017 in the place of the petitioner's father late. Thiru. S.Udhayakumar driver, DR/6343.



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For the Petitioner : Mr.D.Jagadeesan

For the Respondents : Mr.R.Babu
for respondent 1

Mr.R.P.Muruganraja
Government Advocate
for respondent 2

ORDER

The order of rejecting the claim of the writ petitioner to provide appointment on compassionate ground is under challenge in the present writ petition.

2. The petitioner states that his father, late Thiru. S.Udhayakumar served in the respondent Corporation and died on 07.08.2002 while he was in service.

3. The petitioner was a minor at the time of the death of his father and



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therefore, he submitted an application seeking appointment on compassionate ground after attaining maturity. The said application was initially submitted on 21.07.2009 and thereafter on 04.01.2014. The application submitted by the writ petitioner was rejected on the ground that the application was received by the respondent Corporation beyond the period of three years as contemplated under the scheme of compassionate appointment.

4. The compassionate appointment is a concession and could not be claimed as an absolute right. The scheme is to be implemented strictly in accordance with the terms and conditions stipulated. The scheme being violative of Article 14 and 16, could not be extended for the purpose of providing the appointment in violation of the terms and conditions as stipulated.

5. Even to ascertain the indigent circumstances, the pensionary benefits are also to be taken into consideration. The Honourable Supreme



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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



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requires that the family pension must be taken into account in evaluating the merits an application, it has to be followed.”

6. 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 [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



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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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7. Even in yet another recent judgment of the Hon'ble Supreme Court in the case of **CENTRAL BANK OF INDIA vs. NITIN [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.



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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.”

8. The Hon'ble Supreme Court of India in the case of ***The State of Maharashtra and another vs. Ms.Madhuri Maruti Vidhate (Since after marriage Smt.Madhuri Santhosh Koli) [2022 LiveLaw (SC) 820]***, laid down the principles as follows:

*“5. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of **Director of Treasuries in Karnataka and Anr. vs. V. Somyashree, 2021 SCC Online SC 704**, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in **N.C. Santhosh***



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vs. State of Karnataka, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

6. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government



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vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

6.1

Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289.....

“21.

“2.

As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit.In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment.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.

26.

Mumtaz Yunus Mulani vs. State of Maharashtra [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.....

7. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting



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compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

7.1.

Even otherwise, she shall not be entitled to appointment on compassionate ground after a number of years from the death of the deceased employee.”

9. In the case of **Fertilizers and Chemicals Travancore Ltd & Ors. vs. Anusree K.B. [2022 LiveLaw (SC) 819]**, the Apex Court held as follows:

“9.

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 such family a post much less a post held by the deceased.



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10. The application seeking appointment on compassionate grounds is to be submitted within a period of three years as per the scheme and in the present case, the petitioner was a minor at the time of the death of the employee and on attaining maturity, he submitted an application in the year 2009, after a lapse of seven years from the date of the death of the deceased employee. Thus, the application was rejected and this Court do not find any infirmity in respect of the order of rejection, which is impugned in the present writ petition and accordingly, the writ petition stands dismissed. There shall be no order as to costs.

16.11.2022

Index : Yes/No
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To

1. General Manager
Tamil Nadu State Transport Corporation (Salem) Ltd.
Dharmapuri Region, Salem.
2. The Superintendent
(Industrial Relations), Salem.



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S.M.SUBRAMANIAM,J.

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