



WEB COPY



W.P.No.14003 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.14003 of 2018 and

W.M.P.Nos.24769, 24743 and 24752 of 2019

S.Sudhakar

..

Petitioner

Vs.

1. The Commissioner
Corporation of Chennai
Rippon Building
Chennai - 600 003.

2. The Deputy Commissioner
Corporation of Chennai
Rippon Building
Chennai - 600 003.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the concerned records from the second respondent, quash the order of the second respondent dated 22.04.2015 bearing Po.thu.Na.Ka.No.E10/Moo.Mu/5082/2015 as illegal, arbitrary, contrary to law and consequently direct the respondents to appoint



W.P.No.14003 of 2018

the petitioner on compassionate grounds in the suitable post consequent to the death of his mother M.Rajeswari, who had been working as permanent Road Employee in the respondent Corporation at Zone IV, Part 11, Division 45.

[prayer amended vide order dated 16.11.2022
in W.M.P.No.24743 of 2019 in W.P.No.14003 of 2018]

For the Petitioner : Mr.H.Prosper
for Ms.M.Christella

For the Respondents : Mr.G.T.Subramanian
Standing Counsel
for respondents 1 & 2

ORDER

The petitioner is challenging the order of rejection, rejecting the claim for appointment on compassionate ground.

2. The petitioner states that he was born on 06.01.1990 to Mr.Subramani and Mrs.Anjalai. The petitioner's father's brother, one Mr.Muthu, who was an employee in the Corporation, died on 26.08.1989 leaving behind his wife, Mrs.M.Rajeswari. The wife of the deceased



W.P.No.14003 of 2018

WEB COPY

employee, Mrs.M.Rajeswari, also working in the respondent Corporation, adopted the petitioner as her son. The deed of adoption was executed on 02.11.1999 after the death of the employee Mr.Muthu.

3. It is brought to the notice of this Court that the said Mrs.M.Rajeswari also died on 28.06.2010, leaving behind the petitioner as her only adopted son. The petitioner in his capacity as adopted son, filed an application seeking appointment on compassionate ground. The said application was rejected by the Corporation in its proceedings dated 22.04.2015. The said order was not immediately challenged by the petitioner. The writ petitioner filed the present writ petition in the year 2018 and filed a miscellaneous petition, amending the prayer so as to quash the order of rejection dated 22.04.2015.

4. The scheme of compassionate appointment is a concession and the process and object of the scheme is to mitigate the circumstances arising out of the sudden death of an employee.



W.P.No.14003 of 2018

WEB COPY

5. In the present case, the biological parents of the petitioner are very well alive. The petitioner claimed appointment on compassionate ground on account of the death of his adopted mother Mrs.M.Rajeswari in the year 2010. The said late Mrs.M.Rajeswari adopted the petitioner only on 02.11.1999 and even at that time, the biological parents of the petitioner were alive and therefore, the petitioner could not be considered as dependent of the adopted mother. That apart, the adoption deed registered after several years, could not be trusted upon.

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



WEB COPY



W.P.No.14003 of 2018

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 [2022 LiveLaw (SC) 739]***,



W.P.No.14003 of 2018

WEB COPY

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.



WEB COPY



W.P.No.14003 of 2018

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 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



WEB COPY



W.P.No.14003 of 2018

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.”

9. 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



WEB COPY

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 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



WEB COPY



W.P.No.14003 of 2018

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 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



W.P.No.14003 of 2018

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



WEB COPY



W.P.No.14003 of 2018

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 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.”

10. 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



WEB COPY



W.P.No.14003 of 2018

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.

11. In view of the fact that the petitioner is an adopted son and therefore, could not be considered as a dependent of the deceased employee. This Court do not find any infirmity in respect of the order of rejection passed by the respondent. Accordingly, the writ petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

16.11.2022
(1/4)

Index : Yes/No
drm

To

1. The Commissioner
Corporation of Chennai
Rippon Building, Chennai - 600 003.
2. The Deputy Commissioner
Corporation of Chennai
Rippon Building, Chennai - 600 003.



WEB COPY



W.P.No.14003 of 2018

S.M.SUBRAMANIAM,J.

(drm)

W.P.No.14003 of 2018 and
W.M.P.Nos.24769, 24743 and 24752 of 2019

16.11.2022
(1/4)