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W.P.No.36264 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.36264 of 2016

K.Kesavalu

...Petitioner

Vs.

1.The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.

2.The Secretary,
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.

3.The Government of India,
Rep.by its Secretary to the Government,
Ministry of Shipping, RT & H,
Department of Shipping (Port Wing)
Transport Bhavan,
No.1, Paliament Street,
New Street – 110 001.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the Impugned Letter No.SCT5/6908/2014/GA dated --.12.2014 issued by the 2nd respondent and quash the same and direct the 1st respondent to



W.P.No.36264 of 2016

appoint the petitioner in any job based upon his seniority number D.R.2520 in the respondent's Port Trust from 2005 duly permitting him to draw his arrears of pay and allowances and other benefits in the respective scale of pay retrospectively on par with his juniors A.Sumathi & Jayachitra.

For Petitioner : Mr.S.A.Shanmugam
For M/s.Law Square

For R1 & R2 : Mr.Krishnaravindran
Government Advocate

ORDER

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

2. The mother of the writ petitioner Smt.Kamalammal served in Chennai Port Trust as Women Mazdoor in Chief Engineering Department. She was discharged from service with effect from 24.06.2000 on medical invalidation grounds, after putting 8 years of service. Thus, the petitioner made an application to provide appointment on compassionate grounds on 12.02.2001 in the format prescribed. The petitioner states that he submitted all the relevant documents for the purpose of considering his application.



W.P.No.36264 of 2016

However, the said application was not considered on the ground that the mother of the writ petitioner was medically invalidated and relieved from service on 24.06.2000 from Chennai Port Trust service at the age of 47 years. Therefore, after a lapse of about 14 years from the medical invalidation, the claim of the writ petitioner cannot be considered for compassionate appointment.

3. That apart, the employee has received a compensation package in lieu of compassionate appointment as per the decision of the Government of India.

4. It is not in dispute that the medically invalidated employee, who is the mother of the writ petitioner received a compensation package in lieu of compassionate appointment, after her medical invalidation with effect from 24.06.2000. Having received the compensation package instead of compassionate appointment, the petitioner cannot now submit an application after a lapse of 14 years on 29.07.2014 and the said application was rejected.



W.P.No.36264 of 2016

5. Thus, this Court do not find any infirmity since the compassionate appointment cannot be claimed as a right. It is a concession and therefore, it is to be granted strictly in accordance with the rules in force.

6. The principles regarding compassionate appointment was considered by the Apex Court in the following judgments:

(a) The 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 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



W.P.No.36264 of 2016

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.”

(b) In this regard, the Hon'ble Supreme Court of India in the case of ***Ahmednagar Mahanagar Palika vs. Ahmednagar Mahanagar Palika Kamgar Union*** reported in ***[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.



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W.P.No.36264 of 2016

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. 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.”



(c) Even in yet another recent judgment of the Hon'ble Supreme Court

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in the case of **CENTRAL BANK OF INDIA vs. NITIN** reported in [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. Rules which provide for a financial criteria for appointment on Compassionate ground are valid



W.P.No.36264 of 2016

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.”

(d) Even recently on 30.09.2022, 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)***, reported in ***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 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 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.....

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WEB COPY



W.P.No.36264 of 2016

“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 v. 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 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.”

(e) Yet another judgment in the case of ***Fertilizers and Chemicals Travancore Ltd & Ors. Vs. Anusree K.B.*** reported in ***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.

9.1. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.”

7. In view of the fact that the mother of the writ petitioner was medically invalidated with effect from 24.06.2000 and the petitioner submitted an application after a lapse of 14 years from the date of relieving of the mother of the writ petitioner and further, the mother of the writ petitioner received the compensation package of a sum of Rs.3,85,000/- in lieu of



W.P.No.36264 of 2016

compassionate appointment, there is no reason whatsoever to consider the claim of the writ petitioner for providing appointment on compassionate grounds.

8. Accordingly, the writ petition stands dismissed. No costs.

01.11.2022

Index : Yes
Speaking order: Yes
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WEB COPY



W.P.No.36264 of 2016

S.M.SUBRAMANIAM, J.

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