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W.P.No.36509 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.36509 of 2016
and
W.M.P.No.31419 of 2016

A.Prakasam

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Highways and Public Works Department,
The Secretariat, Fort St. George,
Chennai-600 009.
2. The Chief Engineer (General),
Highways Department,
Chepauk, Chennai-600 005.
3. The Superintending Engineer,
Highways Department,
Madras Circle, Chennai-600 032.
4. The Divisional Engineer,
Highways Department,
Thiruvannamalai,
Thiruvannamalai District-606 601.



5. The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance,
Travellers Bungalow,
Vandavasi-604 408,
Thiruvannamalai District.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the Memo No.Ner7(1)/42272/ 2007 dated 21.03.2010 of the 2nd respondent and quash the same and to direct the 2nd respondent to scrutinize the proposal sent by the 4th respondent in a proper Letter No.1408/2007/A4 dated 28.6.2007 to the 3rd respondent in a proper perspective by following the G.O.Ms. No.155 Labour and Employment (Q) Department dated 10.12.2014 and appointing the petitioner on compassionate ground as Junior Assistant.

For Petitioner : Mr.K.Thennan

For Respondents : Mr.K.Karthik Jagannath
Government Advocate

ORDER

The order of rejection, rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2. The petitioner states that his father Late Mr.M.Arumugan served as Road Worker at Vandavasi, Thiruvannamalai District and died on 11.07.1982



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while he was in service. The petitioner is the 6th child of his parents and was one year old at the time of the death of his father. The mother of the writ petitioner submitted an application for providing compassionate appointment to the elder brother of the writ petitioner, Thiru. Sundaram. During the pendency of the application, the elder brother of the writ petitioner died on 11.07.1991. After the death of his elder brother, the mother of the writ petitioner gave an application on 21.07.1991 to provide an appointment to the petitioner informing the death of the elder brother of the writ petitioner. However, the said application was not considered and thereafter, the petitioner himself submitted an application on 15.09.2001 seeking appointment on compassionate grounds.

3. The learned counsel for the petitioner made a submission that the family of the petitioner was in indigent circumstances on account of the sudden death of his father. The father died leaving seven legal heirs and altogether they were struggling even to lead a normal family life. Unfortunately, his elder brother also died in the year 1991. Thus, on attaining the age of majority, the petitioner submitted an application in the year 2001. The authorities rejected the application on the ground that it was submitted



beyond the period of three years and therefore, is not entertainable as per the terms and conditions of the scheme of compassionate appointment.

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4. The learned counsel for the petitioner further made a submission that the authorities were inclined to consider the case of the writ petitioner for appointment, more specifically, they were willing to appoint the writ petitioner as Road Worker. However, the petitioner is a differently abled person and therefore, is not in a position to accept the said appointment and he made a request to provide him appointment to the post of Junior Assistant. The said request was not considered and thus, the petitioner could not able to accept the offer of appointment made to him to join in the post of Road Worker. The offer of appointment was made by the respondents in the year 2007 and the authorities could have considered the disability of the writ petitioner for providing appointment to him to the post of Junior Assistant. Contrarily, they have rejected his application subsequently in the year 2010. Thus, the petitioner is constrained to move the present writ petition.

5. The learned Government Advocate appearing on behalf of the respondents objected to the said contentions by stating that the deceased



employee died in the year 1982. The mother of the writ petitioner submitted an application to provide appointment to her elder son and the elder son also died in the year 1991 and then the petitioner made an application after a lapse of about 10 years from the date of death of his elder brother on 15.09.2001, more so, after a lapse of about 19 years from the date of death of his father. An offer of appointment was still made to him to join in the post of Road Worker but the petitioner was not willing on account of his disability or otherwise and therefore, the Department was unable to accommodate him during the year 2007 and consequently, rejected the application to provide appointment to the post of Junior Assistant in the year 2010.

6. This Court is of the considered opinion that there was a consistent delay at every stage in pursuing the issue by the petitioner and there was a delay on the part of the respondents in considering the case of the writ petitioner also. However, the principles governing the scheme of compassionate appointment are to be considered by this Court. The scheme can neither be expanded nor its terms and conditions can be violated for providing appointments. Compassionate appointment is a concession and not a right conferred. Thus, there cannot be any violation in following the terms



and conditions of the scheme.

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7. The simple facts of the case on hand reveal that the employee died in the year 1982. The application made by the mother of the petitioner seeking appointment for her elder son (who is the elder brother of the petitioner) was under consideration and meanwhile, the elder brother of the writ petitioner died in the year 1991, and on attaining the age of majority, the petitioner's mother submitted an application on 21.05.2001, after a lapse of about 19 years from the date of death of the deceased employee, seeking appointment for the petitioner and then the petitioner himself submitted an application on 15.09.2001, seeking appointment on compassionate grounds. Thus, loss of time became a ground for the respondents to reject the application as the application itself was submitted beyond the period of three years from the date of the death of the employee. In any event, almost 40 years lapsed from the date of death of the deceased employee. Now the question arises, can an appointment on compassionate grounds be provided after a lapse of four decades, as the very purpose and object of this scheme is to mitigate the circumstances arising on account of sudden death? The situation which was prevailing in the year 1982, at the time of the death of an employee, cannot be



foreseen now after a period of 40 years for the purpose of providing public appointments, as such appointment can never be claimed as an absolute right, since the scheme itself is a concession.

8. That apart, the order impugned was passed on 21.03.2010 and the writ petition was filed on 07.10.2016, after a lapse of about 6 years from the date of passing of the impugned order. There was a long delay even in approaching this Court and delay of 6 years is also a ground to reject the writ petition on the ground of laches.

9. 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, is 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,



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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 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 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.

10. 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.

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



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

12. 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 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. 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.”

13. Even in yet another recent judgment of the Hon'ble Supreme Court 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.

14. In view of the facts and circumstances, the petitioner has not established any acceptable ground for the purpose of considering the relief as sought for, and accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.09.2022

Index : Yes
Speaking order
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To

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State of Tamil Nadu,
Highways and Public Works Department,
The Secretariat, Fort St. George,
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S.M.SUBRAMANIAM, J.

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