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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.40987 of 2016

Purushothaman

... Petitioner

Vs.

1. The District Collector,
   Vellore District.

2. The Tahsildar,
   Arcot Taluk,
   Vellore District.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the issue of the impugned order Na.Ka. A5.9457/2015 dated 14.10.2016 passed by the first respondent and quash the same and consequentially to direct the first respondent to provide the compassionate appointment to the petitioner.

For Petitioner : Mr. S. Gopinath
for Mr. G. Mutharasu

For Respondents : Mr. D. Gopal
Government Advocate
for R1 and R2

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O R D E R

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

2. The petitioner states that his father late Mr. Gopal, was working as Village Assistant in Revenue Department and died on 31.01.1997, while he was in service.

3. The petitioner submitted an application on 06.06.1997, along with all necessary documents to the second respondent to provide appointment on compassionate grounds. The petitioner states that, his elder brother and elder sister also had given no objection to appoint him on compassionate ground. The application submitted by the writ petition was not considered and therefore he filed W.P.No. 1155 of 2015, to direct the respondents to pass orders on the representation submitted by the writ petition on 06.06.1997. This Court passed an order on 26.02.2015, directing the authority to consider the representation and pass orders. Pursuant to the direction, the authorities conducted an enquiry to ascertain the indigent circumstance of the family for the purpose of considering the application submitted by the petitioner. Accordingly, the petitioner filed the Contempt Petition in Cont.P No. 2190 of

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2016 also. The authorities during the enquiry, found that the application submitted seeking compassionate appointment itself was antedate. The authorities have verified the office seal in the application and found that the date of application was manipulated by the petitioner and further the application itself was submitted belatedly by putting antedate. In response of the representation dated 10.02.2014, the respondents have found that no such representation was received by the District Collector or by the Tahsildar.

4. That apart, the authorities found that the petitioner studied B.Com and M.Com and he is running a school in the name of " Annai Terasa Children School". The wife of the writ petitioner is working as teacher in Wisdom Matric School. When the petitioner himself running a nursery school and his wife is working as teacher, the authorities arrived at a conclusion that the family of the deceased employee is not in indigent circumstance and accordingly rejected the application.

5. 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

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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, the authorities competent are bound to conduct field inspections and ascertain the imminent circumstances, warranting an appointment on compassionate grounds.

6. 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 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.

7. The very purpose and object of the scheme of compassionate

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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.

8. Lapse of time would also provide a ground to draw a factual inference that the penurious circumstances aroused on account of the sudden

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death of an employee became vanished. Thus, Courts have repeatedly held that compassionate appointment cannot be granted after several years.

9. 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 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.*

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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."

10. 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. The appointment on compassionate grounds is provided upon the death of an employee in harness without any kind of security whatsoever.

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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."

11. 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:-

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"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."

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12 (a). 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*

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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 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*

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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*

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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."

12 (b). 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. 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

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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."

13. The father of the writ petitioner died on 31.01.1997, almost 25 years lapsed. Meanwhile, the petitioner possessed post graduation decree in Commerce (M.com) and running a nursery school and his wife is working as a teacher in another school. At this length of time, the Court also cannot form an opinion that the family of the deceased employee is in indigent circumstance. That apart, the petitioner got married and living along with his wife and children and therefore, he cannot be considered as a dependant of the deceased employee. Thus the claim of the writ petitioner for appointment on compassionate ground was rightly rejected.

14. Thus, this Court do not find any infirmity in respect of the order impugned in the present writ petition. Accordingly, the writ petition stands dismissed. No costs.

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Index : Yes / No
Speaking order / Non-Speaking order

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S.M.SUBRAMANIAM, J.

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