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W.P.No.41267 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.41267 of 2016

and

W.M.P.No.35238 of 2016

S.Vadivel

... Petitioner

Vs.

1. The State represented by,
Secretary to Government,
Energy Board Department,
Fort St.George,
Chennai – 600 009.
2. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai – 600 002.
3. The Superintendent Engineer,
TANGEDCO, Vellore,
Vellore District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the third respondent herein vide proceedings



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Lr.No.490/SE/VEDC/VLR/Adm.3/A.S./2016-2 dated 05.10.2016 and quash the same and consequently direct the Respondents herein to grant a job on compassionate ground due to the death of his father Shanmugam who died on 21.09.1995 while he was in service to the petitioner.

For Petitioner : Mr.R.Ramesh
For Respondents :
For R1 : Mr.M.Rajendiran
Additional Government Pleader
For R2 & R3 : Mr.P.Subramanian
for TANGEDCO

ORDER

The order of rejection rejecting the claim of the writ petitioner for compassionate appointment in proceeding dated 05.10.2016 is under challenge in the present writ petition.

2. The petitioner states that his father late Shanmugam was working as Helper in the respondent Tamil Nadu Electricity Board and died on 21.09.1995, while he was in service. The deceased employee has a daughter through his first wife and the petitioner is the son of the second wife.



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3. The petitioner submitted an application for providing compassionate appointment on 09.07.1998. However, the petitioner was a minor during the relevant point of time and therefore, his application was not considered. Subsequently, the petitioner approached the authorities for providing an appointment on compassionate grounds. Since, it was not considered by the authorities for several years, the petitioner filed W.P.No.37407 of 2015 and this Court passed an order directing the third respondent therein to consider the representation submitted by the writ petitioner on 12.06.2014 & 12.10.2015 and pass appropriate orders on merits and in accordance with law.

4. The petitioner issued a contempt notice on 26.08.2016 and thereafter, an impugned order dated 05.10.2016 was issued stating that the daughter of the first wife who is elder than the petitioner raised an objection to provide appointment in favour of the writ petitioner.

5. The learned counsel for the petitioner made a submission that the very same elder sister Smt.Kala @ Kalaiyarasi has given no objection letter in favour of the writ petitioner in the year 1997 itself. There was a family dispute



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and thereafter, a Civil Suit was instituted by the said Smt.Kalaiyarasi and the suit ended with an order of dismissal by the competent Civil Court Law. Thus, the case of the petitioner is to be considered.

6.The fact remains that the deceased employee died on 21.09.1995 and the application submitted within a period of three years was not considered, since the petitioner was a minor at that point of time. The further application was submitted in the year 2014, after the lapse of about 19 years from the date of the death of the deceased employee.

7. The learned counsel for the petitioner made a submission that in between the petitioner submitted a renewal application on 31.01.2007 and the said application was also not considered. However, there was a consistent delay in pursuing the matter till such time.

8. The petitioner filed a writ petition in the year 2015. Pursuant to the direction issued by this Court, the order of rejection was issued. The fact remains that the petitioner was a minor at the time of the death of his father and his first application was not considered and after a lapse of several years he filed



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another application and finally after a lapse of about 20 years from the date of the death of the deceased employee, he filed a writ petition and pursuant to the direction issued by this High Court to consider the representation, the impugned order was passed.

9. At this length of time, the scheme of compassionate appointment cannot be extended in favour of the petitioner.

10. 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, 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. It is not



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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. 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



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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.

11. 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.

12. 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,



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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.”

13. 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



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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



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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.”

14. 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



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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.”

11. Thus, the petitioner is not entitled for the relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes
Internet:Yes
Speaking order



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rgm/ssr



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S.M.SUBRAMANIAM, J.

SSR

To

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The Government of Tamil Nadu,
Energy Board Department,
Fort St.George,
Chennai – 600 009.
2. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
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