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W.P.No.16717 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.16717 of 2018

R.Gomathi

..

Petitioner

Vs.

1. The Chairman

Tamil Nadu Generation and Distribution
Corporation Ltd.

No.144, N.P.K.R.R. Maaligai
Annasalai, Chennai - 600 002.

2. The Junior Engineer

Tamil Nadu Generation and Distribution
Corporation Ltd.

Mogappair East, J.J.Nagar
Nolambur, Chennai.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus directing the respondents to appoint the petitioner in any of the post in the respondent department according to her educational qualification under compassionate appointment by considering her representations dated 20.01.2016 and 29.11.2017.



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For the Petitioner : Mr.A.Rajesh Kanna

For the Respondents : Mr.P.Subramaniam
for respondents 1 & 2

ORDER

The relief sought for in the present writ petition is to direct the respondents to appoint the petitioner on compassionate ground.

2. The petitioner states that she married Thiru. Rajan on 13.03.2005 as per the Hindu Rites and Customs. Mr.Rajan was an employee in the respondent Tamil Nadu Electricity Board. One male child was born from and out of the wedlock and the husband of the petitioner, Mr.Rajan, died on 04.12.2015, while he was in service.

3. The petitioner in her affidavit filed in support of the writ petition, categorically stated that, there was a difference of opinion between herself



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and the said late Mr.Rajan and she got a decree of divorce in H.M.O.P.No.291 of 2010 dated 12.02.2013. The deceased employee died after the decree of divorce and therefore, the petitioner could not be considered as wife at the time of the death of the deceased employee. When the petitioner was not a wife at the time of the death of the deceased employee, the scheme of compassionate appointment could not be extended in her favour.

4. The object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of sudden death of the deceased employee and it is not for the purpose of providing one job for the family of the deceased employee.

5. Scheme of compassionate appointment has to be implemented strictly in accordance with the terms and conditions stipulated. Compassionate Appointment Scheme, being a concession, cannot be extended after a lapse of many years. Scheme being an exception, cannot be



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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.

6. 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 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.

7. The very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the



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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.

8. 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.



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9. 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 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, recently on 05.09.2022, in the case of ***Ahmednagar Mahanagar Palika vs. Ahmednagar Mahanagar Palika Kamgar Union [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



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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.”



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11. 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 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



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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.”

12. 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 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*



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*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



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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 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



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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 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



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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.”

13. 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 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.

14. Accordingly, the writ petition stands dismissed. There shall be no order as to costs.

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Index : Yes/No
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S.M.SUBRAMANIAM,J.

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