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W.P.No.18057 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18057 of 2019

Sornaendran

... Petitioner

Vs.

1.The Superintendent of Police,
Kancheepuram District.

2.The Inspector of Police,
Seiyyar Police Station,
Kancheepuram District.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent vide Na.Ka.No.M1/449/11930/2019 dated 30.04.2018 and quash the same as illegal and consequently direct the respondents to appoint this petitioner in any of the job under them on compassionate ground.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.S.Rajesh
Government Advocate



ORDER

The order of rejection, rejecting the claim of the writ petitioner for compassionate appointment in proceedings dated 30.04.2018 is under challenge in the present writ petition.

2. The petitioner states that his father was a Head Constable in the Police Department and he was murdered by an accused person and a Criminal Case was registered. On account of sudden death of the father, the family of the petitioner was in penurious circumstances. The mother of the writ petitioner submitted an application, seeking appointment on 19.07.2010. The father of the petitioner died on 25.12.2007. Thus, the application made by the mother of the petitioner within the period of three years from the date of death of the deceased employee. However, the mother of the petitioner submitted an application seeking appointment to the petitioner, who is the son. Admittedly, the petitioner was a minor during the relevant point of time, when the application was submitted seeking appointment on compassionate grounds. Thus, the authorities rejected the said application on the ground that the petitioner was a minor at the time of submission of the application. Thus, he is not eligible for appointment on compassionate grounds as per the terms and conditions of the scheme.



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3. The learned Government Advocate appearing on behalf of the respondents made a submission that the scheme is to be implemented in accordance with the terms and conditions and the father of the writ petitioner died on 25.12.2007 and application was submitted by the mother of the writ petitioner on 19.07.2010 was considered. Since the petitioner was a minor, he was not provided appointment on compassionate ground.

4. The fact remains that the employee died on 25.12.2007 and now almost 15 years lapsed from the date of death of the deceased employee. The application submitted by the mother of the writ petitioner in the year 2010 was rejected on 30.04.2018 on the ground that the petitioner was a minor.

5. Question arises, whether, now after a lapse of 15 years from the death of the deceased employee, the benefit of scheme of compassionate appointment is to be provided or not.

6. Compassionate appointment is a concession and therefore, cannot be claimed as an absolute right. Scheme being an exemption is to be implemented strictly in accordance with the terms and conditions. High Court cannot extend



the scope of the scheme, which would result in unconstitutionality.

Compassionate scheme being violative of Article 14 and 16 of the Constitution of India. Such appointments are to be restricted to the maximum and it is to be provided only to the genuine families, where the indigency was established with reference to the date of death of the deceased employee.

7. Efflux of time is also a ground to reject the claim on the ground that the penurious circumstances aroused on account of sudden death of an employee became vanished. Thus, long delay in considering the application is also a ground to reject, since the indigent circumstances became disappear. Therefore, this Court is of an opinion that the delay is also a ground to reject the application.

8. 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



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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.”

9. 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:-



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“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



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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.”

10. 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.



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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. In the present case, the petitioner was a minor during the relevant point of time, when his mother submitted an application. On attaining age of majority, the period of three years as contemplated under the scheme became expired. Thus, the case of the petitioner was not considered.

12. The learned counsel for the petitioner made a submission that the case of the petitioner is a pathetic case, where the conditions are to be relaxed. This Court is of the considered opinion that the relaxation is not a right. Relaxation of conditions in the matter of compassionate appointment cannot be done in a routine manner, even by the Government.



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13. Equal opportunity in public employment is a Constitutional mandate. Thus, the appointments are to be made under the Constitutional schemes and by providing equal opportunity to all the eligible candidates, who all are aspiring to secure public employment through open competitive process. Thus, in the event of granting relaxation of conditions for compassionate appointment by the Government, they are committing an act of patent unconstitutionality, which would result in infringement of the Fundamental Right of all other eligible citizen, who all are longing to secure public employments on merits and through rule of reservation.

14. Compassionate appointments are made without any merit assessment, without assessing capability of a person and without following the rule of reservation, mere death made as eligibility for a public employment. That being the scope of compassionate appointment, the authorities are bound to follow the terms and conditions scrupulously without any violation or deviation.

15. Even the indigent circumstances of the family are to be ascertained by conducting a field enquiry by the competent authority. Mere Tahsildar certificate issued regarding indigency is insufficient to form an opinion that the



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family is in the indigent circumstances.

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16. The Honourable Supreme Court of India has held that the terminal and pensionary benefits and the amount of pension is also to be considered as source of income to form an opinion for the purpose of ascertaining the indigent circumstances of the family. Various mitigative factors are also to be considered. Thus, it is not as if one appointment to the family of the deceased person granted compassionate appointment. The very scheme is to mitigate the circumstances arising on account of the sudden death of an employee. Thus, the claim of compassionate appointment neither can be expanded by the Court nor rule or conditions is to be relaxed in favour of an individual and any one of the circumstances the action became unconstitutional and further result in infringements of the right of all other eligible persons, who all are waiting for public appointments.

17. With these observations, the Writ Petition stands dismissed. No costs.

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Jeni
Index : Yes
Speaking order



To

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S.M.SUBRAMANIAM, J.

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