



W.P.No.17760 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 18.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17760 of 2018
and
W.M.P.No.21029 of 2018

R.Sowmya

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary,
Tamil Nadu Forest Department,
Secretariat, Chennai – 9.

2.The Principal Chief Conservator of Forests,
Panagal Building,
Saidapet,
Chennai – 600 015.

3.The Conservator of Forests,
Coimbatore Forest Circle,
R.S.Puram,
Coimbatore – 641 002.

4.The District Forest Officer,
Gudalur Division,
Gudalur,
The Nilgiris.

..Respondents

1/16



W.P.No.17760 of 2018

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent with regard to the order passed in Ref.No.10581/VA.9/2017-2 dated 07.09.2017 and to quash the same and to direct the respondents to consider the case of the petitioner for appointment on compassionate ground to any eligible and existing vacancies.

For Petitioner : Mr.V.S.Jagadeesan

For Respondents : Mr.K.H.Ravikumar
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 Rathnam was working as Forest Ranger and died on 27.10.2005, while he was in service. The deceased employee had two wives and the petitioner is the daughter, born through the second wife of the deceased employee.



W.P.No.17760 of 2018

3. The learned counsel for the petitioner states that the brother of the writ petitioner submitted an application, seeking appointment on compassionate grounds within a period of three years from the date of the death of the deceased employee. However, he had not pursued the application. There was a dispute within the family, more specifically between the first wife children and second wife children.

4. The application of the brother of the writ petitioner was not considered since the brother of the writ petitioner has not produced the legal heir certificate along with the application. The legal heir certificate was not issued on account of the family dispute between the first wife and the second wife. Civil Suit was instituted and the litigation came to an end on 11.06.2012. Thereafter, the respective parties approached the Revenue authorities and obtained legal heir certificate.

5. The petitioner submitted an application on 22.01.2014, seeking appointment on compassionate grounds, after a lapse of more than 8 years from the date of death of the deceased employee. Thus, the authorities



W.P.No.17760 of 2018

competent rejected her application on the ground that the application was received after a lapse of 8 years from the date of death of the deceased employee and further, the petitioner is the daughter of the second wife of the deceased employee. Therefore, as per the scheme of compassionate appointment, the petitioner is not eligible for compassionate appointment.

6. The learned counsel for the petitioner mainly contended that the legal heir certificate was not submitted due to the family dispute between the first wife and the second wife of the deceased employee and the Civil Suit was instituted, which was pending during the relevant point of time. However, those facts are irrelevant as far as the compassionate appointment is concerned.

7. 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. Thus, the appointment is to be made within a reasonable period of time and long delay in considering the application itself is a ground to reject the same since the penurious circumstances if at



W.P.No.17760 of 2018

all aroused, on account of efflux of time, it became vanished. Thus, the delay is also a ground to deny appointment on compassionate grounds.

8. The principles regarding the compassionate appointment are laid down by the Hon'ble Supreme Court in the following cases:

(a) 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



W.P.No.17760 of 2018

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.”

(b) 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,



W.P.No.17760 of 2018

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



W.P.No.17760 of 2018

and/or more qualified.”

WEB COPY

(c) 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.



WEB COPY



W.P.No.17760 of 2018

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.”

(d) 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 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



WEB COPY



W.P.No.17760 of 2018

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 to one of the dependants of the deceased who may be eligible for such employment.It must be remembered in



W.P.No.17760 of 2018

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



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.”

(e) 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.

9.1. 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



W.P.No.17760 of 2018

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 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.”

9. In the present case, the petitioner submitted an application after a lapse of eight years from the date of death of the deceased employee. That apart, the brother of the writ petitioner initially submitted an application and the second application by the petitioner itself is not entertainable under the terms and conditions of the scheme of compassionate appointment.

10. For all these reasons, the petitioner has not made out any acceptable ground for the purpose of considering the relief. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2022



W.P.No.17760 of 2018

Index : Yes
Speaking order: Yes
kak
To

1. The Secretary,
State of Tamil Nadu,
Tamil Nadu Forest Department,
Secretariat, Chennai – 9.
2. The Principal Chief Conservator of Forests,
Panagal Building,
Saidapet,
Chennai – 600 015.
3. The Conservator of Forests,
Coimbatore Forest Circle,
R.S.Puram,
Coimbatore – 641 002.
4. The District Forest Officer,
Gudalur Division,
Gudalur,
The Nilgiris.



WEB COPY



W.P.No.17760 of 2018

S.M.SUBRAMANIAM, J.

kak

W.P.No.17760 of 2018

18.11.2022