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W.P.No.9896 of 2



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.9896 of 2016
and
W.M.P.No.8882 of 2016

S.Suresh

... Petitioner

Vs.

1.State of Tamil Nadu,
rep by its Secretary to Government,
Revenue Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The District Collector, Thanjavur,
Coimbatore Nagapattinam Highway,
New Collector Office, AVP,
Azhagammal Nagar,
Thanjavur – 613 010.

3.The Tahsildar, Kumbakkonam,
Kumbakkonam.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for concerned records relating to the order No.Na.Ka.18570/2014/A1 dated 15.05.2014 passed by the 2nd respondent and quash the same consequently to direct the 3rd respondent to appoint the petitioner on compassionate grounds in any suitable post to which he is eligible and found suitable.



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For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.K.Surendran,
Additional Government Pleader

ORDER

The order of rejection rejecting the claim of the writ petitioner for compassionate appointment in proceedings dated 15.05.2014, is under challenge in the present writ petition.

2. The petitioner states that his father was employed as Village Assistant in Aasur Village and died on 12.08.1997 while he was in service. At the time of the death of the deceased employee, the petitioner was a minor and therefore his mother submitted an application on 25.05.1998 seeking appointment on compassionate grounds. However, the said application was not considered during the relevant point of time by the competent authorities. However, the action was taken in the year 2004 when the mother of the petitioner again submitted a representation to consider her case for providing appointment to his son, who attained the age of majority by that time.



3. The learned counsel for the petitioner drew the attention of this Court with reference to the departmental correspondences to show that the respondents asked the petitioner to furnish the relevant documents and therefore he was hopefully waiting for an appointment order on compassionate grounds. Finally, the respondents rejected the same in the year 2014, after several years, stating that there is no provision to entertain second application on compassionate ground submitted by the writ petitioner, who is the son of the deceased employee.

4. The learned counsel for the petitioner is of an opinion that the mother of the petitioner was an illiterate woman and therefore she could be not able to pursue the remedy vigilantly. However in the year 2004, the petitioner submitted an application which was not considered within a reasonable period of time, even the impugned order was passed after a lapse of about 10 years from the date of submission of application and thus the case of the writ petitioner is to be considered.

5. In this regard, the learned counsel for the writ petitioner relied on the orders passed by this Court in W.P.No. 16659 of 2015 date 12.06.2015, wherein the order impugned was set aside and the authorities were directed



to re-consider the issue on merits and in accordance with law. Therefore, similar consideration is to be shown in this writ petition also.

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6. The learned counsel for the respondents objected the said contention by stating that the petitioner is not eligible for compassionate appointment as the application by the petitioner was submitted beyond the period of three years from the date of the death of the deceased employee. The mother submitted an application in the year 1998 and she had not pursued the application. However the petitioner was a minor at the time of the death of the deceased employee and on attaining the majority, he submitted an application, by that time, three years period as stipulated in the scheme became expired. Thus the reasons for rejection is in consonance with the terms and conditions of the scheme of compassionate appointment and thus the writ petition is to be rejected.

7. Let us consider the order relied on by the writ petitioner which was passed in W.P.No. 16659 of 2015 dated 12.06.2015. Several such orders are passed directing the authorities to re-consider the issues. However, this Court has experienced that the authorities have reiterated their stand again and again and rejected the claim for compassionate appointment with



reference to the terms and conditions stipulated under the Scheme.

Therefore directing an authority to consider or reconsider the issue would do no service to the cause of justice. The litigants are back again to the Court repeatedly and in several cases the litigants are filing more than two writ petitions again and again since the orders are passed only to consider or reconsider their cases. In such circumstances, the authorities are reiterating the rejection only by citing the terms and conditions which are stipulated in the scheme of compassionate appointment. Therefore, this Court is of the humble opinion that the issues are to be decided on merits at all circumstances. High Court is not expected to pass a mechanical order just to consider the representation, which will result in multiplicity of litigation, which will cause harassment to the litigants and not desirable and to that extent, this Court has to say such situation would result in denial of their basic rights.

8. High Court has to crystallize the rights of the parties, whenever a relief is sought for in a writ proceedings, the eligibility and entitlement of the petitioner is to be ascertained by the High Courts, by considering the issues raised between the parties, only in such circumstances, quietus can be given to the issues and any via media orders are recommending the cases for



consideration on the hands of the authorities would not serve the purpose and therefore this Court is not inclined to look into the orders which are all not passed on merits deciding the issues.

9. In the case of ***Basawaraj & Another vs Spl. Laq Officer reported in (2013) 14 SCC 8***, the Supreme Court in unequivocal terms ruled that:

' It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.'

10. Therefore, the orders passed to reconsider the issues are to be confined only to the facts and the circumstances of the cases decided by the Court and such orders cannot have the binding precedents.

11. Regarding the binding precedents of the courts, the Constitution



Bench of the Hon'ble Supreme Court of India in unequivocal terms held in the case of *National Insurance Company Limited vs Pranay Sethi* reported in (2017) 6 SCC 680. Thus the principles settled by the

constitutional courts would have the binding precedents, all the cases are to be decided on its own facts and circumstances. The courts are expected to apply mind with reference to the facts and circumstances and decide the issues independently and only the principals laid down and settled by the constitutional courts would have the binding value and in all other cases, the directions to reconsider or consider or the reliefs granted are to be confined only with reference to the case decided and citing such orders will not be of any availability to the petitioner.

12. As far as the Scheme of compassionate appointment is concerned, the long delay is also a ground to reject the case as the penurious circumstances arose on account of the sudden death of an employee became vanished. The Hon'ble Supreme Court of India repeatedly emphasised that the scheme of compassionate appointment cannot be expanded and it is to be confined with reference to the terms and conditions of the scheme. Expansion of scheme would result in unconstitutionality, scheme being violative of Article 14 and 16 of the Constitution of India cannot be



expanded for the purpose of providing an appointment in violation of the constitutional scheme of appointments

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13. 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 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 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.

14. 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.

15. 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. 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.”

16. 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:-

“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.”

17. 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.

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.”

18. In the present case, the deceased employee died on 12.08.1997 and 25 years lapsed. The writ petition submitted an application in the year 2004 on attaining the age of majority and by that time, period of three years expired. Now, at this length of time, the Scheme cannot be expected in favour of the writ petitioner. Therefore, the petitioner is not entitled for the relief as such sought for in the present writ petition. Consequently, the writ petition stands dismissed both on merits and on the ground of laches. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-Speaking order

To



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Chennai – 600 009.

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S.M.SUBRAMANIAM, J.

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