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W.P.No.24422 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24422 of 2019

S.Sathiya Kumar

... Petitioner

-Vs-

1. The Director General of Police,
Mylapore, Chennai -4.

2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 7.

3. The Joint Commissioner of Police,
East Zone, Egmore, Chennai-8.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order Na.Ka.No.Pa.Pe. 1/Ke.Ma/07/3282/2015 dated 19.03.2019 passed by the Joint Commissioner of Police, East Zone, the 3rd respondent herein and quash the same and consequently direct the Director General of Police, the 1st respondent herein to consider the petitioner's case as recommended by the Joint Commissioner of Police, East Zone vide his letter Na.Ka.No.Pa.Pe.1/Ki.Ma.07/3252/2015 dated 02.11.2016 and appoint the petitioner in any suitable post on compassionate grounds.

For Petitioner : Dr.R.Sampath Kumar

For Respondents : Mr.S.Rajesh
Government Advocate



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ORDER

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

2. The father of the writ petitioner, late Mr. M.S.Senthil Kumar was working in the Police Department and died on 02.10.2002, while he was in service. At the time of the death of his father, the petitioner was aged about 7 years and therefore, he was not eligible for appointment on compassionate grounds.

3. The learned counsel for the petitioner made a submission that the mother of the writ petitioner submitted an application on behalf of the petitioner, initially within a period of three years from the date of the death of the deceased employee. However, there was a family dispute and the petitioner's family was unable to produce the legal heir certificate. In this regard, a Civil Suit was instituted in O.S.No.265 of 2004. The suit was instituted since there was a counter claim by another lady namely S.Santhalakshmi. The suit was dismissed on 12.10.2006 and



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the Appeal Suit filed in A.S.No.5 of 2007 was also dismissed on 23.03.2007. The Second Appeal was dismissed on 21.01.2009 and thereafter, the legal heir certificate issue was confirmed.

4. After getting the legal heir certificate pursuant to the decree passed by the Civil Courts, the petitioner once again submitted an application on 11.02.2015, on behalf of the petitioner, to provide appointment on compassionate grounds. The said application was rejected by the respondents in the proceeding dated 19.03.2019, on the grounds that the application itself was submitted after a lapse of about 15 years from the date of the death of the deceased employee.

5. The learned counsel for the petitioner made a submission that the first application was submitted by the mother of the writ petitioner, on behalf of the petitioner, within a period of three years, which was not taken into consideration by the competent authority. The petitioner admittedly was a minor at the time of the death of his father, therefore, he was not eligible. The mother has not pursued the application for securing appointment for herself. Therefore, the second application under the scheme of the compassionate appointment is not entertainable. The first



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application was also not pursued by the mother of the writ petitioner and there was a dispute in respect of the Legal heir certificate. However, the fact remains that the legal heir certificate was confirmed by the Civil Courts only in the year 2009, and thereafter, the petitioner submitted an application in the year 2015, again after a lapse of 6 years. At the outset, 20 years lapsed from the date of the death of the deceased employee. The scheme of compassionate appointment cannot be extended beyond a reasonable period of time.

6. The purpose and object of the scheme of compassionate appointment is to mitigate the circumstances that arises on account of the sudden death of an employee. Thus, the appointments have to be made within a reasonable period of time. Efflux of time is also a ground to deny appointment on compassionate grounds since a factual inference is to be drawn that penurious circumstances which arose on account of the sudden death of the employee became vanished thus, the scheme being a concession cannot be expanded for the purpose of providing of one appointment to the family of the deceased employee. In the event of expanding the scope of the scheme, the fundamental right of all eligible citizens who all are aspiring to secure public employment are infringed.



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All appointments are to be made under the constitutional scheme and in accordance with the recruitment rules in force.

7. Equal opportunity in public employment is a constitutional mandate. Compassionate appointments are provided without any merit assessment. The rules of reservation are also not being followed. Mere death alone is the condition for providing an appointment on compassionate grounds. Even in respect of indigent circumstances, the authorities competent are bound to conduct a field enquiry. The Hon'ble Supreme Court has held that the terminal and pensionary benefits received by the family of the deceased employee are also to be taken into consideration for the purpose of ascertaining the source of income of the family. Therefore, all these aspects are to be considered to provide appointment on compassionate grounds. In the event of large-scale compassionate appointments in public administration, without any merit assessment, suitability, eligibility, and other aspects, the public administration will become insufficient. Men and women of merit will lose the opportunity to secure public employment through open competitive process.



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8. In this context Article 335 of the Constitution of India, provide claims of Scheduled Casts and Scheduled Tribes to the services and posts. Accordingly, the claims of the members of the Scheduled Caste and Scheduled Tribe shall be taken into consideration, consistently with the maintenance of the sufficiency of administration, in the making of the appointments of services and posts in connection with the affairs of the union or the state.

9. When the Indian Constitution contemplates and ensures efficient public administration, even while implementing the rule of reservation for Scheduled Casts and Scheduled Tribes, compassionate appointments are provided with no assessment at all. Even the suitability and eligibility are not considered. That is the reason why the Courts have held that the scheme of compassionate appointment is violative of Article 14 and 16 of the Constitution of India. Thus, the Courts cannot take a sympathetic view in such matters which would undoubtedly result in insufficiency in public administration, which would ultimately cause irreparable damage to the citizens who all are availing the public services to be provided by the Government.



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10. 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.”

11. 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 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



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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.”

12. 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:-



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“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



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excluding others who might be in greater and/or far more acute financial distress.”

13. In the present case, the deceased employee died in the year 2002 and the application submitted by the wife of the deceased employee, on behalf of the writ petitioner, within a period of three years was unable to be considered since the family of the petitioner had not furnished the legal heir certificate and the petitioner was a minor at that time. On completion of the Civil Dispute, the legal heir certificate was issued after several years and the application submitted by the writ petitioner in the year 2015 was rejected on the ground of delay. Now 20 years lapsed from the date of the death of the deceased employee.

14. Thus, this Court does not find any infirmity in respect of the order passed by the respondent. Accordingly, writ petition **dismissed**. However, there shall be no order as to costs.

02.12.2022

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S.M.SUBRAMANIAM.J.,

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To

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