



W.P.No.24572 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.24572 of 2019

Sri Kanagaraj

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Social Welfare Department,
Fort St. George, Chennai 600 009.
2. The Director of Social Welfare Department,
Nagireddy Garden,
SIDCO Old Building Complex,
Guindy, Chennai 600 032.
3. The District Collector,
Villupuram District,
Villupuram 605 602.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order Na.Ka.No.6592/2017 /PeE4 -1 dated 31/10/2018 issued by 3rd respondent and quash the same consequently directing the respondents to give appointment to the petitioner on compassionate grounds based on his qualifications.



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For Petitioner : Mr.R.Saseetharan for
Mr.M.Padmanabhan

For Respondents : Mr.R.P.Murugan Raja,
Government Advocate [for R.1 & R.2]
: Mr.J.K.Saravanan
Government Advocate [for R.3]

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 served as Noon Meal Organizer in the Municipal Government Higher Secondary School, Beemanayakan Thoppu, Villupuram District, and died on 24.07.2001 while he was in service. The petitioner submitted an application immediately on 22.10.2001 for providing an appointment on compassionate grounds. However, it was not considered by the competent authorities despite the fact that the application was forwarded to the third respondent commissioner.

3. The learned counsel for the petitioner made a submission that the claim of the writ petitioner for compassionate appointment was rejected on the ground that a male member cannot be appointed as a Noon Meal



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Organizer in the Noon Meal Center as per the Government Order. In this aspect, the Government issued a clarification, that in the event of non-availability of a female candidate in a family, a male candidate, who is the legal heir of the deceased employee can be accommodated in the Noon Meal Centers. Despite the fact that the Government relaxed the rule, the case of the writ petitioner was not considered. Thus, the petitioner is concerned to move the present petition.

4. Beyond the grounds raised by the petitioner, this Court has to consider the long delay in pursuing the matter by the petitioner. In the present case, father of the writ petitioner died on 24.7.2001. Though the petitioner submitted an application in the year 2001 itself, he has filed the present writ petition in the year 2019, after a lapse of about 18 years from the date of his first application for compassionate appointment. In this regard, the learned counsel for the petitioner made a submission that the impugned order has been passed in the year 2018. Perusal of the order reveals that a writ petition was filed by one Mr.S.Ramachandran in W.P.No.24005 of 2014 and subsequently by Mr.Kanagaraj, S/o,Sriramulu, i.e., the petitioner in W.P.No.30402 of 2017 and an order was passed on 27.7.2018. As far as the petitioner is concerned, he submitted further



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representation based on the orders passed in W.P.No. 24005 of 2014.

Therefore, the respondents have passed the impugned order in the year 2018, in response to the claim of the writ petitioner made in comparison with the petitioner in W.P.No.24005 of 2014.

5. However, the cause actually arose in the year 2001, when the petitioner submitted an application. The petitioner had not pursued the matter for very long period and therefore, the order impugned passed in the year 2018 cannot be construed as a cause of action for all purposes. That apart, efflux of time is also a ground to reject the appointment on compassionate grounds as the penurious circumstances which arose on account of the sudden death of an employee, became vanished on account of lapse of many years.

6. The Hon'ble Supreme Court of India made an observation that in the event of a long delay, the compassionate appointment cannot be granted in view of the fact that the scheme cannot be extended for providing appointment to the legal heirs of the deceased employee. It is to be provided in order to mitigate the circumstances arising on account of the sudden death and therefore, the compassionate appointment is to be given within a reasonable period of time.



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7. 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.”

8. 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 compassionate grounds is not automatic and



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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.”

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



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WEB COPY 10. Accordingly, the writ petition stands **dismissed**. There shall be no order as to costs.

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Internet : Yes

Index : Yes

Speaking order

To,

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Rep. by its Secretary to Government,
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S.M.SUBRAMANIAM, J.

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