



W.P.No.27401 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27401 of 2017

and

W.M.P.Nos.22914 of 2019 & 18566 of 2018

S.Prabakaran

... Petitioner

-Vs-

1. The Commissioner Corporation of Chennai
Chennai Corporation,
Rippon Building
Park Town, Chennai 600 001

2. The Zonal Officer
Zone 5 Chennai Corporation,
No.61, Basin Bridge Road
Chennai 600 021

3. The Assistant Executive Engineer
Ward-6, Zone-2,
Chennai Corporation
No.28, Seven Wells Road,
Chennai-600 001

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus, directing the 1st respondent to consider the application of the petitioner for a suitable job with the first respondent on compassionate grounds due to his father's death while in service with the 1st respondent.



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For Petitioner : Mr.T.Mathi

For Respondents : G.I.Sulramanay

ORDER

A writ of Mandamus has been instituted to direct the first respondent to consider the application submitted by the writ petitioner to provide appointment on compassionate grounds.

2. The petitioner states that his father, late Mr.A.Sambasivam was employed in Corporation of Chennai as a Driver and died on 31.07.2008 while he was in service.

3. Initially, an application was submitted within a period of three years by the writ petitioner to provide an appointment on compassionate grounds. It is brought to the notice of this Court that the said application, filed in the first instance was rejected by the respondent Corporation in the year 2010. Again the petitioner submitted another application which was also rejected in the year 2015. The learned counsel for the respondents made a submission that both the rejection orders were not challenged by the petitioner during the relevant point of time.



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4. The learned counsel for the petitioner contended that the reason for rejection was that the elder brother of the petitioner was already employed in a Corporation service. However, the brother of the petitioner is living separately and not supporting the family of the writ petitioner and therefore, the petitioner is eligible for appointment on compassionate grounds. However, the brother of the writ petitioner was appointed on merits, even before the death of his father and therefore, the said appointment cannot be a bar for considering the case of the writ petitioner for compassionate appointment.

5. The present writ petition is filed in order to consider the third time application, filed by the writ petitioner, seeking compassionate appointment. The earlier passed two rejection orders were not challenged by the petitioner. Almost 14 years had lapsed from the date of the death of the deceased employee. The question arises, whether the petitioner is eligible to be considered for compassionate appointment or not.

6. Compassionate appointment is a concession and cannot be claimed as an absolute right. The scheme of compassionate appointment is to be implemented strictly in accordance with its terms and conditions.



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The purpose and object of the scheme is to mitigate the circumstances arising on account of the sudden death of an employee and therefore, such appointments are to be provided within a reasonable period of time, by ascertaining the indigent circumstances of the family of the deceased employee, by conducting a field enquiry. The objective of the scheme is not to provide one employment to the family of the deceased employee. Therefore, the appointment cannot be claimed as a matter of right and it depends on the circumstances of the family and other mitigating factors which all are to be established within a reasonable period of time.

7. The scheme of compassionate appointment is violative of Articles 14 and 16 of the Constitution of India. In the event of expanding the scope of the scheme by the Courts, the same would result in the infringement of the rights of the citizens who all are aspiring to secure public employment through open competitive process. Large number of compassionate appointments, without any selection process, without assessing the merits and also without implementing the rule of reservation, would cause inefficiency in the public administration. Therefore, the scheme of compassionate appointment is to be restricted as all appointments have to be made under the Constitutional schemes



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and by providing equal opportunity as enshrined under the Constitution of India.

8. In the present case, the petitioner as of now is aged about 47 years, at the time of filing of the writ petitioner, he was aged about 43 years and even at the time of the death of the deceased employee, the petitioner was aged about 33 years. Thus, he is over-aged now. Now at this length of time, appointment cannot be provided on compassionate grounds.

9. 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



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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.”

10. 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



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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



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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.”

11. 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



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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.”

12. Pertinently, the petitioner had not challenged the earlier two rejected orders, passed by the respondents i.e., one in the year 2010 and another in the year 2015. Therefore, the petitioner cannot file the present writ petition for the purpose of considering his third application. Once the petition is rejected and the petitioner had not challenged the said rejection order, he cannot send another application and approach the Court for the purpose of considering his case.



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13. For all these reasons, this Court does not find any acceptable reason for the purpose of considering the relief as sought for and accordingly, this writ petition stands **dismissed**. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking order
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To

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S.M.SUBRAMANIAM.J.,

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W.P.No.27401 of 2017

and

W.M.P.No.29302 of 2017

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