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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

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THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.27642 of 2018

and

W.M.P.No.32207 of 2018

K.Rajaprasath

...Petitioner

Vs

1.The District Collector,
Collectorate Office,
Cuddalore District.

2.The Tahsildar (Revenue),
Tahsildar Office,
Kattumannar Koil,
Cuddalore District.

3.The Tahsildar (Revenue),
Tahsildar Office,
Sreemusnam,
Cuddalore District.

...Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent made in No. Na. Ka. No. A1/5674/2013 dated 22.07.2013 dated 22.07.2013, quash the same and consequently direct the Respondents to consider the application of the Petitioner dated 25.09.2017 and consequential notice No. Na. Ka. A2/365/2018 dated 13.08.2018 issued by the Third Respondent herein.

For Petitioner : Mr.S.Ezhil Raj

For Respondents : Mr.P.Gurunathan,
Additional Government Pleader

O R D E R

Heard Mr. S.Ezhil Raj, Learned Counsel for the Petitioner and Mr. P.Gurunathan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.



2. The father of the Petitioner, viz., D.Krishnasamy, while working as Village Administrative Assistant died on 27.10.2011 and a representation dated 21.12.2012 was made by the Petitioner to the Second Respondent for appointing him on compassionate grounds. The said application was rejected by the First Respondent by Order No. Na. Ka. A1/5674/2013 dated 22.07.2013 for the reason that the wife of the deceased employee and the mother of the Petitioner, Krishnaveni, was in permanent employment in Panchayat Union Primary School, Tenpathi, Kattumannar Koil. The Petitioner did not challenge the said order then and had waited till the retirement of the said Krishnaveni on 30.04.2017. Thereafter, the Petitioner seems to have made another representation dated 25.09.2017 to the First Respondent to resurrect the rejected claim and has filed this Writ Petition on 09.10.2018 seeking compassionate appointment.

3. Before proceeding to examine the contentions of the Petitioner, reference must be made to the decision of the Hon'ble Supreme Court of India in in Umesh Kumar Nagpal -vs- State of Haryana [(1994) 4 SCC 138], where the object of granting compassionate appointment in public service has been explained in the following words:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. 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 a member of such family a post much less



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a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

Recapitulating that compassionate appointment is an exception to the general rule, the Hon'ble Supreme Court of India in State of Jammu and Kashmir -vs- Sajad Ahmed Mir [(2006) 5 SCC 766], has held as follows:-

"11.Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."



Again, the Hon'ble Supreme Court of India in Local Administration Department -vs- M. Selvanayagam [(2011) 13 SCC 42], has held as follows:-

"11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependants is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependants and the financial deprivation caused to the dependants as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.

14. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his



death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments."

In another decision in Government of India -vs- P.Venkatesh [(2019) 15 SCC 613], the Hon'ble Supreme Court of India has reiterated the legal position as follows:-

"Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need...."

4. In view of the said legal position, the Petitioner cannot be said to be suffering from any hardship, especially when the mother of the Petitioner was in permanent employment at the relevant point of time. Moreover, the Petitioner himself was aged about 26 years at the time of demise of his father and he should have got himself suitable for appointment by then and nothing prevented him from applying for any other post depending upon his competence. It is apparent that the Petitioner has been able to tide over the crisis with the passage of time and if any indulgence is now shown brushing aside the germane aspects highlighted in the judicial decisions referred supra, it would unwittingly tantamount to unduly favouring the Petitioner to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced. Viewed from that perspective, there does not appear to be any infirmity in the impugned order passed by the First Respondent requiring interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

vjt

To

1. The District Collector,
Collectorate Office,
Cuddalore District.



2.The Tahsildar (Revenue),
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Kattumannar Koil,
Cuddalore District.

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3.The Tahsildar (Revenue),
Tahsildar Office,
Sreemusnam,
Cuddalore District.

+1cc to Mr.S.Ezhilraj, Advocate Sr.No.20107

+1cc to the Government Pleader Sr.No.19536

W.P.No.27642 of 2018

GJ(CO)
RVM(15/06/2022)