



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.3330 of 2020

and

W.P. (MD) .No.2787 of 2020

M.Manikandan

... Petitioner

Vs.

1.The Additional Chief Secretary,
Home Department (Police-18),
Secretariat, Chennai-600 009.

2.The Director of Forensic Science Department,
30-A, Kamarajar Salai,
Mylapore,
Chennai-600 004.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in connection with the impugned order passed by him in his proceedings in No.A4/41784/2013 dated 04.08.2017 and consequential rejection of his appeal by the first respondent in his letter No.66636/Police.18/2017-3 dated 17.10.2019 and quash the both as illegal and arbitrary and consequently directing the respondents to consider his case under compassionate appointment in any of the suitable post based on his educational qualification within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu
For Respondent : Mr.N.Satheesh Kumar
Additional Government Pleader

O R D E R

The order of rejection rejecting the application filed by the petitioner for compassionate appointment in proceedings dated 04.08.2017 is under challenge in the present writ petition.

2. The petitioner states that his mother namely C.Nagajothi was working as Lab Assistant in the second respondent Department for about 12 years and died on 10.12.2010, while he was in service. The petitioner states that at the time of death of his mother, his father, Mr. J. Malairajan was working as Junior Assistant in Hindu



Religious and Charitable Endowment Department. The elder sister of the petitioner got married and she is living separately. Thus, the petitioner was looked after by his grand father, who in turn provided education to the petitioner. The petitioner submitted an application to the second respondent on 02.12.2013 to provide appointment on compassionate grounds. However, the impugned order itself reveals that the proper application in the prescribed format was submitted by the petitioner on 25.11.2013.

3. The learned counsel appearing for the petitioner submits that the very reason stated in the impugned order that the application was not submitted within a period of three years is error. In fact, the application was submitted by the petitioner on 25.11.2013 and the mother of the petitioner died on 10.12.2010. Therefore, the application is well within the period of three years. Another ground for rejection is that the father of the petitioner was working as Junior Assistant in Hindu Religious and Charitable Endowment Department. The said factum is not disputed by the petitioner. However, the impugned order states that the petitioner has furnished a false information that his father is remarried and further suppressed the fact that on the date of death of his mother, the father of the writ petitioner was in employment.

4. This Court is of the considered opinion that as far as the submission of application by the petitioner is concerned, it was submitted within the period of three years from the date of death of the deceased employee. The mother of the petitioner died on 10.12.2010 and the application submitted by the petitioner on 25.11.2013 on attaining the age of majority and the said application is within the period of three years. Thus, the said ground is incorrect.

5. As far as the second reason stated in the impugned order is concerned, even the petitioner in his affidavit admitted that his father was working as Junior Assistant in Hindu Religious and Charitable Endowment Department, at the time of death of his mother in the year 2010. Further, the Department, on enquiry, found that the petitioner has given a false information that his father remarried another woman. This apart, the employment of the father, during the relevant point of time when his mother died, was also suppressed.

6. With reference to the second reason, this Court is of the considered opinion that if the spouse of the deceased employee is employed, then the scheme of compassionate appointment cannot be extended. If no one is employed in the family of the deceased employee and the family is in penurious circumstances, then alone, the Authorities Competent has to conduct a proper enquiry and provide compassionate appointment. In the present case, the mother of the petitioner died in the year 2010. Even as per the sworn



affidavit filed by the petitioner, his father was employed as Junior Assistant in Hindu Religious and Charitable Endowment Department. Further, it is stated that elder sister of the petitioner also got married. This being the factum, the petitioner is not eligible to get appointment on compassionate grounds on the ground that his father was employed in Hindu Religious and Charitable Endowment Department, at the time of death of his mother.

7. The learned counsel appearing for the petitioner made a submission that the petitioner is in possession of Indigent Certificate issued by the Tahsildar and he furnished the copy of the Indigent Certificate issued by the Tahsildar, Ramanathapuram in proceedings dated 01.09.2020.

8. The said certificate states that the petitioner is in indigent circumstances. This Court is of the considered opinion that the mother of the petitioner died in the year 2010 and the Tahsildar issued the Certificate in the year 2021. Even in case if the petitioner is in indigent circumstances at present in the year 2022, the same cannot be construed as a ground to provide compassionate appointment as the mother of the writ petitioner died in the year 2010. Therefore, the Indigent Certificate is one aspect of the matter and the date of death is another aspect. Beyond all these things, whether the petitioner is eligible with reference to the terms and conditions of the scheme of compassionate appointment. When any one of the family member of the deceased employee is employed, then the family is not entitled to avail the benefit of scheme of compassionate appointment.

9. In the present case, the father of the writ petitioner admittedly was working as Junior Assistant in Hindu Religious and Charitable Endowment Department. Therefore, on the date of death of the deceased employee, the family was not eligible to avail the scheme of compassionate appointment. Thus, the subsequent Indigent Certificates issued by the Tahsildar in the year 2015, 2021 may not have relevant, as far as Scheme of compassionate appointment is concerned. Scheme of compassionate appointment cannot be extended merely based on the Indigent Certificate issued by the Tahsildar.

10. The scheme of compassionate appointment was introduced to mitigate the circumstances arising on account of sudden demise of the Government Employee. Compassionate appointment is not a regular appointment, nor an appointment under the constitutional scheme. It is a concession granted to the Government employees on certain exceptional circumstances. Thus, the compassionate appointment can never be claimed as a matter of right and only if a person is entitled under the terms and conditions, then alone the scheme can be extended, but not otherwise. Equal opportunity in public employment is a constitutional mandate. All appointments are to be made in accordance with the rules and by providing equal opportunity



to participate in the process of selection.

11. As far as the compassionate appointments are concerned, no selection is conducted, no suitability or eligibility are tested, but persons are appointed merely based on death of an employee. Therefore, compassionate appointment is to be restricted in the interest of the efficient public administration. No doubt, the Government has also restricted the compassionate appointments and it is to be extended only to the deserving family and more so, after a lapse of many years. Providing compassionate appointment after a lapse of many years would not only defeat the purpose and object of the scheme, but also the penurious circumstances arose on account of the sudden death became vanished. Thus, the lapse of time is also a ground to reject the claim for compassionate appointment. Number of judgments are delivered by this Court and the Government has also issued revised instructions for providing compassionate appointment in G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020.

12. Even recently, the Honourable Supreme Court in the case of **State of Uttar Pradesh and Others vs. Premlata**, reported in **(2022) 1 SCC 30**, has made observations in respect of implementation of the scheme of compassionate appointment and the relevant portion of the observations are extracted hereunder:

"8. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in **State of Karnataka vs. V.Somayashree [(2021) 12 SCC 20]**, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in **N.C.Santhosh vs. State of Karnataka [(2020) 7 SCC 617]**, this Court has summarized the principle governing the grant of appointment on compassionate ground as under:

10.1. That the compassionate appointment is an exception to the general rule;

10.2. That no aspirant has a right to compassionate appointment;

10.3. The appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

10.4. Appointment on compassionate ground can



be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

10.5. The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

9. As per the law laid down by this Court in a catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

9.1. In the case of **H.P. v. Shashi Kumar [(2019) 3 SCC 653]**, this Court in paras 21 and 26 had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this Court in **Govind Prakash Verma v. LIC [(2005) 10 SCC 289]**, it is observed and held as under:

"21. The decision in **Govind Prakash Verma**, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in **Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138]**. The principles which have been laid down in **Umesh Kumar Nagpal** have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

"2. ... 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



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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 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."

"26. The judgment of a Bench of two Judges in *Mumtaz Yunus, Mulani v. State of Maharashtra* [Mumtaz Yunus



Mulani v. State of Maharashtra, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

13. The factum established in the present case is that the mother of the petitioner died in the year 2010 and the petitioner submitted an application in the year 2013 within a period of 3 years. However, on the date of death of the deceased employee, the father of the writ petitioner, who is the husband of the deceased employee, was working as Junior Assistant in Hindu Religious and Charitable Endowment Department. Therefore, the family is not falling within the ambit of scheme of compassionate appointment. Thus, the second reason stated in the impugned order is in consonance with the scheme of compassionate appointment and there is no infirmity.

14. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

SS

To

1.The Additional Chief Secretary,
Home Department (Police-18),
Secretariat, Chennai-600 009.

2.The Director of Forensic Science Department,
30-A, Kamarajar Salai,
Mylapore,
Chennai-600 004.



+1 CC to M/s.SPL GP (SR-8395[F] dated 24/02/2022)

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-8284[F] dated 24/02/2022)

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