



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.3854 of 2020

M.Selvarajan

... Petitioner

-vs-

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Tahsildar,
Tirunelveli,
Tirunelveli District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, or any other appropriate writ, order or direction in the nature of writ, calling for the records of the 1st respondent in his proceedings in Ni.Mu.A4/4582/2019 dated 19.01.2020 and quash the same and consequently directing the 1st respondent herein to give appointment for the petitioner on compassionate ground on the death of his mother L.M.Seethalakshmi based on his application dated 26.07.2010.

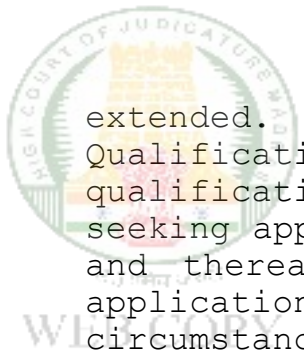
For Petitioner : Mr.D.Srinivasaragavan

For Respondents : Mr.N.Satheeshkumar
Additional Government Pleader

O R D E R

The order impugned dated 19.01.2020 rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present writ petition.

2.The mother of the writ petitioner, Smt.L.M.Seethalakshmi was working as Village Administrative Officer and died on 09.12.2009 while she was in service. At the time of death of the mother of the writ petitioner, his father Mr.Murugesan was also employed in Tirunelveli Municipal Corporation. However, he was placed under suspension on the eve of his retirement. On account of disciplinary proceedings, the father of the petitioner was not allowed to retire from service and continued under suspension and his services were

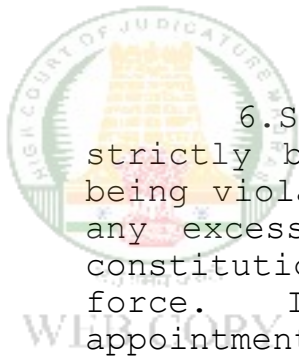


extended. The sister of the writ petitioner was possessing M.C.A. Qualification and his elder brother was having VIII Standard qualification. Therefore, the petitioner submitted an application seeking appointment on compassionate grounds initially on 31.12.2009 and thereafter, on 26.07.2010. The 1st respondent rejected the application mainly on the ground that the family was not in indigent circumstances. At the time of death of the mother of the writ petitioner, his father was also employed and this apart, pensionary benefits of the mother were also settled in favour of the legal heirs. The father was also receiving subsistence allowance, as he was placed under suspension during the relevant point of time. Considering all the facts and circumstances, the authorities made a finding that the family was not in indigent circumstances and therefore, the scheme of compassionate appointment cannot be extended.

3.The learned counsel for the petitioner reiterated that the father of the writ petitioner was placed under suspension and mother died and under those circumstances, the petitioner submitted an application. The income during the relevant point of time was insufficient. Thus, the findings of the authorities in the impugned order that the family was not in indigent circumstances cannot be accepted.

4.This apart, the earlier order passed by the 1st respondent was challenged in W.P.(MD) No.10650 of 2014 and this Court passed an order on 18.09.2018 setting aside the order and remanding the matter back to the authorities for reconsideration. However, the authorities have again passed the same order citing the similar reasons. Thus, on that ground also, the order impugned is liable to be set aside.

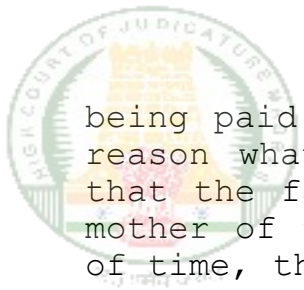
5.The learned Additional Government Pleader appearing on behalf of the respondents objected the said contention by stating that once the authority factually found that the petitioner's family was not in indigent circumstances, the petitioner is not eligible for compassionate appointment. This apart, the elder brother has not requested for any appointment. The only reason stated is that he was VIII Standard. Whether he was employed or not itself was not clarified. This apart, the sister of the petitioner was possessing the qualification of M.C.A. and the father was employed in Tirunelveli Municipal Corporation and was under suspension. When the family circumstances and other conditions were enquired into by the competent authority, and thereafter, they formed an opinion that the family was not in penurious circumstances, which is one of the essential conditions for the purpose of extending the scheme of compassionate appointment, the authorities rejected the application for compassionate appointment. Thus, the writ petition liable is to be rejected.



6. Scheme of compassionate appointment has to be extended strictly by following the criteria fixed in the policy. Scheme being violative of Articles 14 and 16 of the Constitution of India, any excess appointment on compassionate ground would defeat the constitutional scheme of regular recruitment of the Service Rules in force. In the event of extending the scope of compassionate appointment and many number of persons are appointed on compassionate ground, then the constitutional scheme of regular appointment is defeated. There is no process of selection nor eligibility and suitability are assessed in respect of compassionate appointment. Thus, the appointees on compassionate ground are to be restricted to the extent possible so as to ensure that appointments are made on merits and in accordance with law. Appointment on compassionate ground is to be considered as an exception and therefore, cannot be implemented beyond the scope of its terms and conditions. Even regarding the indigent circumstances of the family, when the authorities on enquiry found that the family is in a position to maintain the livelihood, then the scheme need not be extended. It is the subjective satisfaction of the authorities and the scope of judicial review under Article 226 is very much limited.

7. Appointment on compassionate grounds can never be claimed as an absolute right. Scheme being exception, it is to be restricted to the extent possible and the power of judicial review is to be extended only in cases where the authorities have committed gross violation of the terms and conditions of the policy, but not otherwise. Courts cannot conduct a roving enquiry in respect of the indigent circumstances of the family, as those facts are the subjective satisfaction of the competent authority concerned. Therefore, mere statement that the elder brother is not employed or sister though possessed M.C.A. qualification is also not employed, cannot be a ground for the High Court to grant appointment on compassionate grounds.

8. In the present case, admittedly at the time of death of the deceased employee, her husband (father of the petitioner) was placed under suspension and his services were continued. Even otherwise, the pensionary benefits of the deceased employee were settled in favour of the family and family pension is being paid to the father of the writ petitioner. When a family is receiving family pension and pensionary benefits and father getting subsistence allowance or provisional pension, under those circumstances, the authorities formed an opinion that the family was not in indigent circumstances. The Apex Court held that even the terminal benefits and the quantum of pension is also to be taken into consideration for the purpose of assessing the indigent circumstances of a family. Presently, a decent amount of pension is being paid to the pensioners. It is to be looked into whether such pension being paid to the family is sufficient to meet out the normal livelihood or not. If the authorities found that a decent amount of pension is being received by the family, then the family is not in indigent circumstances and in the present case, the family pension is also



being paid to the father of the writ petitioner, there is no other reason whatsoever to interfere with the findings of the authority that the family is not in indigent circumstances. This apart, the mother of the petitioner died on 09.12.2009 and even at that point of time, the petitioner's sister completed M.C.A. Qualification.

WEB COPY

9. The Hon'ble Supreme Court laid down the principles to be adopted in the case of compassionate appointment in **State of Uttar Pradesh and Others vs. Premlata**, reported in **(2022) 1 SCC 30**, as follows:-

"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 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."

10. In view of the facts and circumstances, this Court do not find any infirmity or perversity in respect of the reasons furnished in the order impugned dated 19.01.2020 passed by the 1st respondent.

11. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar



To

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Tahsildar,
Tirunelveli,
Tirunelveli District.

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-8214[F] dated 23/02/2022)

+1 CC to M/s.SPL GP (SR-8396[F] dated 24/02/2022)

W.P.(MD) No.3854 of 2020
23.02.2022

abr

MS/09.03.2022/7P.5C