



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.13101 of 2020

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C.Jagadeesh

... Petitioner

-Vs-

The Commissioner,
Ottanchathiram Municipality,
Ottanchathiram, Dindigul District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.773/2013/P.1, dated 02.12.2016 on the file of the respondent and quash the same as illegal and consequently, to direct the respondent to provide compassionate ground appointment to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.S.Louis
For Respondent : Mr.J.Parekhkumar

ORDER

The order impugned dated 02.12.2016, rejecting the claim of the writ petitioner for compassionate appointment, is under challenge in the present Writ Petition.

2.The father of the writ petitioner was working as Over Head Tank Operator in the respondent Municipality and died in harness on 19.01.2011. The petitioner during the relevant point of time was a minor and therefore, not eligible to seek appointment on compassionate ground. The mother of the petitioner submitted an application for appointment. However, the fact remains that the mother is an illiterate woman and she has not pursued the matter during the relevant time.

3.The authorities informed the petitioner that the petitioner may submit an application, after attaining the age of majority. Accordingly, the petitioner submitted application, on attaining the age of majority on 30.10.2016 and thereafter, the respondent passed the impugned order on 02.12.2016, rejecting the application on the ground that at the time of the death of the deceased employee, the petitioner was a minor. Thus, the fact remains that the employee died on 19.01.2011 and the petitioner attained the age of majority on 25.10.2015 and thus, the application was submitted beyond the



period of three years.

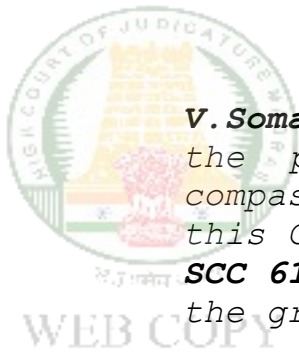
4.This Court is of the considered opinion that the very purpose and object of the scheme of compassionate appointment is to mitigate the circumstances, arising on account of sudden demise of the Government Employee and therefore, the appointment on compassionate ground cannot be granted after a lapse of many years. The scheme, being exception, is violative of Articles 14 and 16 of Constitution of India. Thus, the scheme is to be implemented in a restricted manner, so as to ensure that all appointments are made under the Constitutional schemes and in accordance with the recruitment rules in force.

5.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.

6.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 also restricted the compassionate appointment and it is to be extended only to the deserving family and more so, not 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 also issued revised instructions for providing compassionate appointment in G.O.Ms.18, Labour and Employment, dated 23.01.2020.

7.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 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."

8. In the present case, the petitioner submitted the application, after attaining the age of majority, by that time period of three years expired. This being the factum, this Court is not inclined to provide appointment on compassionate ground, after a lapse about 10 years from the date of death of the deceased employee. There is no infirmity as such in respect of the order of rejection. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (RECORDS)

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/ /2022

Sub Assistant Registrar(CS)



To

The Commissioner,
Ottanchathiram Municipality,
Ottanchathiram, Dindigul District.

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+1 CC to M/s.S.LOUIS, Advocate (SR-8529[F] dated 24/02/2022)

ORDER MADE IN
W.P. (MD) No.13101 of 2020
23.02.2022

PP(12.03.2022) 6P 3C