



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No. 8117 of 2019

and

W.M.P. (MD) No. 6381 of 2019

B.Karthick

... Petitioner

-Vs-

1. The Principal Chief Conservator of Forest,
Office of Principal Chief Conservator of Forest,
Panagal Building,
Chennai.

2. The Divisional Forest Officer,
Varusanadu Soil Conservation Division,
Theni, Theni District.

3. The District Forest Officer,
Pudukottai District,
Pudukottai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent in Na.Ka.No.2061/2018/Pa dated 11.01.2019 quash the same and consequently direct the respondents herein to appoint the petitioner on compassionate appointment in any vacancy considering the length of service of petitioner's father died without regularization.

For Petitioner : Mr.K.APPADURAI, Advocate

For Respondents : Mr.M.RAMESH
Government Advocate

O R D E R

The order impugned dated 11.01.2019 rejecting the claim of the writ petitioner for compassionate appointment on the ground that the father of the writ petitioner was working as a temporary employee and his services were not regularised in the post of Plot Watcher is under challenge in the present Writ Petition.

2. The father of the writ petitioner one Balu was working as a Plot Watcher and was continuing in the service for considerable length of time. However, his services were not regularised admittedly. Unfortunately, he died on 23.06.2016 due to ill health while he was in service. The petitioner states that on account of



sudden death of his father, the family was in indigent circumstances. Thus, the application seeking compassionate appointment was filed. It was rejected on the ground that the services of the father of the writ petitioner as Plot Watcher were not regularised.

WEB COPY

3. During relevant point of time, the Plot Watchers in Forest Department were appointed on temporary basis. On account of various reasons, their services were not regularised. The scheme of compassionate appointment implemented by the Government is applicable only to the regular Government employees and cannot be applied in respect of the temporary employees. When the scheme stipulates that the scheme is to be applied to the regular employees, the Court cannot extend the policy decision of the Government to the un-regularised employees. The Court cannot interfere with such welfare schemes which are all provided by way of concession. Such concession cannot be claimed as a matter of right. Thus, the scheme should be implemented in its letter and spirit, and violation will cause infringement of rights of other persons who are all aspiring to secure public employment through open competitive process. Therefore, the Courts cannot expand the scheme of compassionate appointment either on misplaced sympathy or by applying the principles of liberal interpretation. Thus, the Courts are expected to be cautious while granting appointment on compassionate ground either in a liberal manner or by misplaced sympathy which is impermissible in law.

4. When granting or extending the benefit by the Courts in a particular manner, the High Court is expected to consider the consequences of such misplaced sympathy or extension. If the consequences affect the rights of all other citizens, then such extension cannot be granted as it will result unconstitutionality or deprivation of principles of equality enunciated under the constitution. Thus, such welfare scheme or concession extended by the Government is to be interpreted in its own language and the Courts cannot expand the scope or adopt liberal interpretation or grant relief on misplaced sympathy. In such circumstances, the infringement of right of all other citizens would be in large scale.

5. 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.



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.No.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



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



WEB COPY

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 view of the facts and circumstances, this Court is of an opinion that the petitioner has not established any acceptable ground for the purpose of considering the relief as such sought for in this Writ Petition.

9. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (T&P)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

To

1. The Principal Chief Conservator of Forest,
Office of Principal Chief Conservator of Forest,
Panagal Building, Chennai.
2. The Divisional Forest Officer,
Varusanadu Soil Conservation Division,
Theni, Theni District.
3. The District Forest Officer,
Pudukottai District, Pudukottai.

+1 cc to Mr.K.APPADURAI, Advocate, SR.No.4833

+1CC to Special Government Pleader SR.No.4768

W.P. (MD) No. 8117 of 2019

and

W.M.P. (MD) No. 6381 of 2019

07.02.2022