



WEB COPY

W.P.(MD) No.8432 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.8432 of 2019

and

W.M.P. (MD) No.6613 of 2019

M.Prakashraja

... Petitioner

vs.

1.The Principal Secretary to Government of Tamil Nadu

Home Department

Fort St.George, Chennai-600 009

2.The Director General of Police

Mylapur, Chennai-600 004

3.The Commissioner of Police

Tirunelveli City

Tirunelveli-627 002

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order in Na.Ka.No.A4/020114/2018, dated 23.08.2018 of the 3rd respondent and quash the same as arbitrary and illegal and direct the respondents to appoint the petitioner as Assistant in the 3rd respondent's office or in any other vacant posts on compassionate ground within a time frame fixed by this Court.

For Petitioner : Mr.R.Krishnan

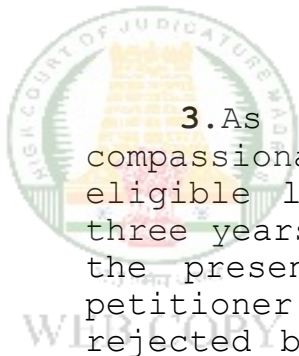
For Respondents : Mr.N.Satheesh Kumar

Additional Government Pleader

ORDER

The order of rejection, dated 23.08.2018, passed by the third respondent, rejecting the claim of the petitioner for compassionate appointment, is under challenge in this writ petition.

2.The petitioner states that his father was working as Naik in Armed Police, Tirunelveli and he died on 15.04.2002 in an accident. During the relevant point of time, the petitioner was minor and aged about 5 years. The mother of the petitioner did not submit application for compassionate appointment. However, the petitioner submitted an application only on 07.08.2018, after a lapse of 16 years from the date of death of the deceased employee. Hence, the respondents rejected the claim of the petitioner.



3.As per the terms and conditions of the scheme of compassionate appointment, application must be submitted by the eligible legal heir of the deceased employee, within a period of three years from the date of the death of the deceased employee. In the present case, the employee died in the year 2002 and the petitioner submitted application in the year 2018 and it was rejected by the respondents. Now, after a lapse of twenty years from the date of death of the deceased employee, the scheme of compassionate appointment cannot be extended to the petitioner.

4.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."

5. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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/ /2022

Sub Assistant Registrar (CS)

To:

1. The Principal Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George, Chennai-600 009.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Director General of Police,
Mylapur, Chennai-600 004.

3.The Commissioner of Police,
Tirunelveli City,
Tirunelveli-627 002.

+1 CC to M/s.R.KRISHNAN, Advocate (SR-22806[F] dated 29/04/2022)

+1 CC to M/s.SPL.GP (SR-23225[F] dated 02/05/2022)

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RS (06.05.2022) 5P-6C