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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.03.2022
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD) No.15257 of 2021

M.Augustin Edwin Raja ... Petitioner

vs.

1.The Director
Tamil Nadu Fire & Rescue Services
No.12, Lakshmipathy Rukmani Salai
Egmore, Chennai-600 008

2.The District Officer
Fire & Rescue Services
Tenkasi District, Tenkasi ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the 2nd respondent in Na/Ka/No.18353/Aa4/2017, dated 28.07.2021 and quash the same and direct the 2nd respondent to appoint the petitioner in a Government job on a compassionate ground.

For Petitioner : No appearance
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

O R D E R

The order dated 28.07.2021, passed by the second respondent, rejecting the claim of the petitioner for compassionate appointment, is under challenge in this writ petition.

2. The impugned order reveals that the mother of the petitioner, namely, Nirmala Sugantha filed an application on 07.09.2017 to provide compassionate appointment to her son. The said application was scrutinized by the respondents and rejected the application on the ground that that on the date of the application, the son of the deceased employee was a minor.

3. Already seven years lapsed and when the petitioner attained the age of majority, the period of three years as contemplated under the scheme of compassionate appointment expired and therefore, he is not eligible for compassionate appointment.

4. The scheme of compassionate appointment was introduced to mitigate the circumstances arising on account of sudden demise of

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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.

5. 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. 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.

6. 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;*

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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

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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

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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."

7. In such view of the matter, this Court do not find any infirmity as such in the impugned order passed by the Second respondent. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Director,
Tamil Nadu Fire & Rescue Services,
No.12, Lakshmipathy Rukmani Salai,
Egmore, Chennai-600 008.

2.The District Officer,
Fire & Rescue Services,
Tenkasi District, Tenkasi.

+1 CC to M/s.SPL GP (SR-10576[F] dated 08/03/2022)

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