



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.15501 of 2021

A.Premkumar

... Petitioner

Vs.

1.The Secretary to Government,
Department of School Education,
St. George Fort, Secretariat
Chennai 600 009.

2.The Director of School Education,
College Road,
Chennai 600 009.

3.The District Elementary Educational Officer,
Nagercoil
Kanyakumari District.

... Respondents

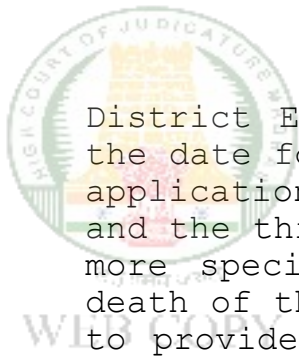
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the 3rd respondent to provide an appointment to the petitioner on compassionate ground upon the death of his father namely S.Arumugam.

For Petitioner : Mr.R.Ilayaraja
For Respondents : Mr.G.V.Vairam Santhosh

ORDER

The relief sought for in the present writ petition is to direct the third respondent to provide appointment to the writ petitioner on compassionate grounds.

2. The father of the writ petitioner was working as an Office Assistant and died on 16.09.2004, while he was in service. The mother of the writ petitioner submitted an application in the year 2005 for providing appointment. The said application was rejected by the competent authorities, as the required documents and no objection letter were not submitted. Thereafter the son of the deceased employee submitted an application seeking compassionate appointment only in the year 2012. Though the learned counsel for the petitioner states that the application was submitted in the year 2006, the very application enclosed along with the typed set of papers in the writ petition reveals that it was acknowledged by the



District Educational Officer, Nagercoil on 11.09.2012. Therefore, the date found in the application cannot be trusted upon. Thus, the application for all purposes is to be considered of the year 2012 and the three years from the date of death of the deceased employee, more specifically after a lapse of eight years from the date of death of the employee. This being the factum, the direction as such to provide compassionate appointment cannot be granted, in view of the principles laid down by the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others vs. Premlata**, reported in **(2022) 1 SCC 30**, wherein, the Hon'ble Supreme Court 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."



3. In such view of the matter, the petitioner is not entitled for the relief as such sought for in this writ petition and the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
Department of School Education,
St. George Fort, Secretariat
Chennai 600 009.

2.The Director of School Education,
College Road,
Chennai 600 009.

3.The District Elementary Educational Officer,
Nagercoil
Kanyakumari District.

+1 cc to Special Government Pleader, SR.No.10597

ORDER MADE IN
W.P. (MD) No.15501 of 2021
07.03.2022

SA(18.03.2022) 5P 5C