



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.16853 of 2020

K.Mukesh Kumar

... Petitioner

-vs-

1.The Chief Secretary to Government,
St. George Kottai, Chennai-5.

2.Director General of Police,
Dr.Radha Krishnan Salai,
Mylapore, Chennai,
Tamil Nadu-600 004.

3.The Commissioner of Police,
Greater Chennai Police,
Vepari, Chennai-7.

4.The District Collector,
Collectorate Campus,
Ramanathapuram.

5.Superintendent of Police,
Collectorate Campus,
Ramanathapuram,
Ramanathapuram District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of impugned order ந.க.எண்.அ4/21857/2017 dated 13.08.2019 of the 5th respondents and quash the same and direct the respondents to consider the representation dated 07.10.2020 and made the appointment in the government department on the basis of compassionate ground.

For Petitioner : Mr.C.S.Ravichandran

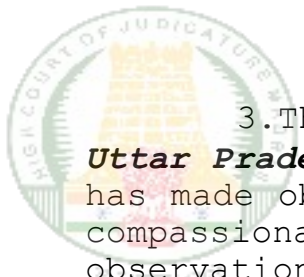
For Respondents : Mr.A.K.Manikkam,
Special Government Pleader



O R D E R

The purpose and object of the scheme of compassionate appointment is not to provide one appointment to the family of the deceased employee. The very object is to mitigate the circumstances arising on account of the sudden death of the Government employee and therefore, lapse of time would be a ground to draw a factual inference that the penurious circumstances arose on account of the sudden death became irrelevant or on account of efflux of time, such penurious circumstances, if continues, cannot be considered. Therefore, scheme cannot be extended beyond its terms and conditions. Scheme of compassionate appointment is violative of Articles 14 and 16 of the Constitution of India. No merit assessment has been made. No selection has been made. No verification of eligibility and suitability is made. Merely based on death, public appointments are granted and in the event of large scale of compassionate appointment, undoubtedly, efficiency in public administration is compromised thereby, resulting in unconstitutionality. Therefore, the scheme, being a concession, cannot be extended nor be provided in an unlimited manner. Scheme is to be restricted to the extent possible so as to ensure that all public appointments are made in accordance with the Recruitment Rules and under the constitutional schemes and by providing equal opportunity to all the eligible persons, who all are aspiring to secure public employment through open competitive process. Such candidates, who all are seeking compassionate appointment, also are eligible to participate in the open competitive process. Therefore, compassionate appointment cannot be utilised as a short cut method for the purpose of securing public employment which can never be considered in a routine manner. Thus, only in respect of deserving family, on account of the death during the particular point of time, is to be considered in accordance with the scheme. Thus, the delay is also a vital factor for rejecting the application on compassionate grounds.

2. In the present case, the father of the writ petitioner, who was employed as Junior Assistant, died on 13.08.2014 while in service. The mother of the petitioner submitted an application in the year 2016. However, the petitioner was a minor during the relevant point of time and therefore, the case of the petitioner was not considered. The mother of the petitioner was not interested in pursuing the appointment. Under these circumstances, on attaining the age of majority, the writ petitioner submitted an application and by that time, the period of three years as contemplated in the scheme expired and therefore, the 5th respondent rejected the application.



3. 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



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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."

4. Taking into consideration the facts and circumstances of the case, this Court is of the considered opinion that there is no infirmity in the order impugned dated 13.08.2019, as the terms and conditions of the scheme are followed by the authorities while rejecting the application submitted by the petitioner and the writ petition is liable to be dismissed.



5. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To

1. The Chief Secretary to Government,
St. George Kottai, Chennai-5.

2. The Director General of Police,
Dr. Radha Krishnan Salai,
Mylapore, Chennai,
Tamil Nadu-600 004.

3. The Commissioner of Police,
Greater Chennai Police,
Vepari, Chennai-7.

4. The District Collector,
Collectorate Campus,
Ramanathapuram.

5. The Superintendent of Police,
Collectorate Campus,
Ramanathapuram,
Ramanathapuram District.

+1 CC to M/s. SPL GP (SR-8983[F] dated 28/02/2022)

W.P. (MD) No.16853 of 2020

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