



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.21323 of 2019

1.K.Premalatha
2.K.Kabilan

... Petitioners

-vs-

1.The Director General of Police,
Beach Road, Mylapore,
Chennai-600 004.

2.The Superintendent of Police,
Tanjavur District,
Tanjavur.

3.The Superintendent of Police,
Tiruvarur District,
Tiruvarur.

... 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 pertaining to the Impugned Order No.P2/19341/2010 dated 28.02.2019 issued by the Superintendent of Police, Tanjore, 2nd respondent herein and to quash the same as unreasonable, illegal, arbitrary and against the well settled law and the provisions of Constitution of India and to consequently direct the respondents 1 and 2 to provide my son, 2nd petitioner herein an appointment on compassionate ground with reference to my applications dated 19.06.2015, 16.10.2015 and 09.05.2018 and 2nd petitioner's application dated 19.06.2015 and 11.07.2018 submitted to the Superintendent of Police, Tanjore, 2nd respondent herein instead of providing me an appointment on compassionate ground duly treating my applications and 2nd petitioner's applications as the continuation of my earlier application dated 17.05.2010 submitted within five months of demise of my husband to the 2nd respondent herein.

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

O R D E R

The order of rejection rejecting the claim of the writ petitioners for compassionate appointment is under challenge in the present writ petition.

2.The 1st petitioner states that her husband Mr.M.Karunanithi was working as Head Constable in the Police Department and met with an accident on 11.01.2010 and died on 19.01.2010 while he was in



service. The husband of the petitioner served about 19 years in the Police Department. During the relevant point of time, the 2nd petitioner, son of the 1st petitioner was a minor. On account of the sudden demise of the husband of the 1st petitioner, the family was in indigent circumstances and was facing several problems.

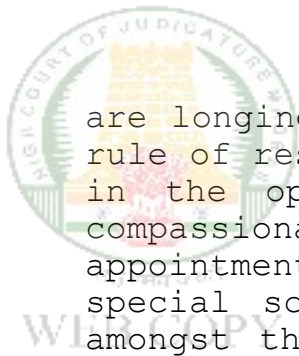
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3.The 1st petitioner further states that she submitted an application on 17.05.2010 seeking appointment on compassionate grounds. The said application was considered by the competent authorities and the 1st petitioner was provided with an appointment order dated 02.05.2018. The order of appointment dated 02.05.2018 reveals that the 1st petitioner was appointed and asked to appear in the District Police Office and submit relevant documents. At that point of time, the 1st petitioner could not able to accept the appointment.

4.Learned counsel appearing on behalf of the petitioners made a submission that on account of the sudden death of the 1st petitioner's husband, she was mentally ill and therefore, she has chosen not to accept the appointment. Thereafter, on attaining the age of majority, a second application was made for securing appointment to the son of the 1st petitioner. The said second application filed seeking compassionate appointment has been rejected by the 2nd respondent, which is under challenge in the present writ petition.

5.Learned counsel for the petitioners states that the 1st petitioner is continuously suffering from mental illness and taking treatment. However, perusal of the affidavit reveals that the 1st petitioner has signed the affidavit. Therefore, this Court cannot draw any such inference regarding the serious mental illness of the 1st petitioner.

6.Be that as it may, this Court is of the considered opinion that second application for compassionate appointment is not maintainable as per the terms and conditions of the scheme. The very scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death of an employee, which is not for providing one appointment to the family of a deceased employee. The compassionate appointment is to be restricted, as the very scheme of compassionate appointment is in violation of Articles 14 and 16 of the Constitution of India. 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 in the event of which, there is a likelihood of inefficiency in the public administration. The selection procedures contemplated under the constitutional schemes are to be followed for the purpose of public appointments. Equal opportunity in public employment is the constitutional mandate. All appointments are to be made strictly in accordance with the service rules and the eligible citizens who all



are longing to secure public employments are to be considered. The rule of reservation is to be followed and opportunity to participate in the open selection process is to be provided. Therefore, compassionate appointment is yet another method of backdoor appointment by way of a special scheme and thus, the scope of such special scheme cannot be enlarged so as to create an inequality amongst the eligible candidates, who are all participating in the process of open selection.

7.The principles to be followed for compassionate appointment was considered by the Hon'ble Supreme Court of India in the recent 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:

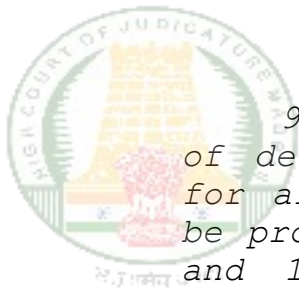
10.1. That the compassionate appointment is an exception to the general rule;

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."

8.In the present case, the deceased employee died in the year 2010 and an application was made in the year 2010 for securing employment to the 1st petitioner/wife of the deceased. Appointment was provided to the 1st petitioner by order dated 02.05.2018 and the 1st petitioner declined to accept and thereafter, filed an application for appointment for her son, who is the 2nd petitioner. Such an application filed after a lapse of eight years cannot be entertained and once the appointment is provided on that ground, there is no provision for entertaining another application for considering the claim of the legal heir, which is impermissible and under these circumstances, the reasons stated in the impugned order are in accordance with the terms and conditions to the scheme and there is no infirmity.

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

Sd/-

Assistant Registrar (A.D II)

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Sub Assistant Registrar(CS)

To

1.The Director General of Police,
Beach Road, Mylapore, Chennai-600 004.

2.The Superintendent of Police,
Tanjavur District, Tanjavur.

3.The Superintendent of Police,
Tiruvarur District, Tiruvarur.

+1 CC to M/s.Y.KRISHNAN, Advocate (SR-5830[F] dated 14/02/2022)

+1 CC to M/s.SPL GP (SR-5906[F] dated 14/02/2022)

W.P. (MD) No.21323 of 2019

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