



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.22773 of 2021

M.Ramkumar

... Petitioner

-vs-

1. The Secretary to Government,
Department of School Education,
St. George Fort, Chennai - 600009.

2. The Director of School Education,
Office of the Director of School Education,
College Road, Chennai - 600009.

3. The Chief Educational Officer,
Office of the Chief Educational Officer,
Pudukottai District.

4. The District Educational Officer,
Office of the District Educational Officer,
Arnthangi, Pudukottai 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 pertaining the impugned order of the 3rd respondent in Na.Ka.No.4672/A1/2021 dated 01.12.2021 and quash the same and consequently directing the 3rd and 4th respondents to consider the petitioner's case for the compassionate grounds.

For Petitioner : Mr.S.Ramsundarvijayaraj

For Respondents : Mr.G.V.Vairam Santhosh

Additional Government Pleader

O R D E R

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

2. The writ petitioner filed this writ petition at the age of 42 years. Even as per the scheme of compassionate appointment, age limit fixed for appointment is 40 years. As of now, the petitioner is aged about 42 years. Admittedly, the father of the writ petitioner, who was working as an Assistant in the Education Department, died on 16.10.1998.



3. The learned counsel for the petitioner made a submission that an application seeking compassionate appointment was preferred on 21.01.2000. However, the respondents have not considered the application and the petitioner was sending many representations to the respondents.

4. The case of the writ petitioner was not considered in view of the fact that the elder brother of the writ petitioner secured Government appointment in the year 2008. However, the order of rejection was passed subsequently after filing of the writ petition filed by the petitioner. Admittedly, the petitioner filed writ petition in W.P.(MD) No.18129 of 2013 and thereafter W.P.(MD) No.8895 of 2013. A review application was also filed in Rev.Aplw (MD) No.60 of 2020. In W.P.(MD) No.8895 of 2013, this Court directed the authorities to consider the case of the petitioner and the authorities have considered the same and rejected the claim of the writ petitioner for compassionate appointment.

5. The reason for rejection is that the father of the writ petitioner died in the year 1998 and the brother of the writ petitioner secured Government appointment in the year 2008 and therefore, the petitioner is not entitled for compassionate appointment under the terms and conditions of the scheme.

6. Compassionate appointment is not an absolute right. The scheme is a concession, as such scheme is in violation of Articles 14 and 16 of the Constitution of India. All appointments are to be made under the constitutional scheme by providing equal opportunity to all the eligible candidates, who are longing to secure public employment through open competitive process. Thus, constitutional validity of the scheme itself was questioned. However, the scheme if considered as a welfare scheme, the Courts have repeatedly held that the compassionate appointment not being a right is to be granted strictly in accordance with the scheme so as to minimise the infringement of rights of other citizens, who all are waiting to secure public employment through open competitive process.

7. Compassionate appointment scheme was introduced in order to mitigate the circumstances arising on account of the sudden death of the employee. Therefore, the purpose and object of the scheme is to be scrupulously followed. In the event of long delay in providing compassionate appointment, a factual inference is to be drawn that the penurious circumstance arose on account of the sudden death of the employee became vanished. Thus, the scheme of compassionate appointment cannot be extended after a lapse of many years. In other words, long delay in considering for appointment is also a ground for rejection. This apart, the elder brother of the petitioner had already secured Government appointment. This being



the fact, the legal heirs of the deceased employee are not entitled for compassionate appointment under the scheme. Further the deceased employee died in the year 1998 and there was a long delay on the part of the petitioner in pursuing the matter. However, he filed the writ petitions in the year 2013 and in the year 2015 and subsequent to the orders of this Court, the authorities have rejected the application. The principles for compassionate appointment were considered by the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others vs. Premlata**, reported in **(2022) 1 SCC 30**, and the relevant portion is 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,



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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. These being the facts and circumstances, the petitioner is not entitled for compassionate appointment under the scheme and the writ petition is liable to be rejected.

9. 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 Secretary to Government,
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+1 CC to M/s.S. RAMSUNDARVIJAYRAJ, Advocate (SR-18517[F] dated 13/04/2022)

+1 CC to M/s.SPL.GP. (SR-18841[F] dated 13/04/2022)

W.P.(MD) No.22773 of 2021
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MGJ(05.05.2022) 6P 7C