



W.P.No.4352 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.4352 of 2010 and

WMP Nos. 1 of 2010 and 1 of 2012

1. Union of India,
The Chief Commissioner of Central Excise,
Chennai Zone, 121, Nungambakkam High Road,
Chennai 600 034.

2. The Commissioner of Central Excise,
No.1, Williams Road,
Contonment, Trichy -1.

... Petitioners

Vs.

K.Subramaniam

... Respondent

Prayer: Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorari to call for the records in O.A.No.190 of 2008, dated 31.08.2009 on the file of the Central Administrative Tribunal, Madras and quash the same.



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For petitioners : M/s Umesh Rao K.
Senior Standing Counsel
For Respondent : Mr.A.N.Rajan

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed challenging the order passed by the Tribunal in O.A.No.190/2008, dated 31.08.2009, in any by which, the petitioners were directed to verify the vacancy position in Group-D posts, during the relevant period of three years from the date of death of the father of the respondent herein and also to consider him for appointment against the next available group-D post.

2. The brief facts leading to the filing of the writ petition are as follows.

One Mr.V.Krishnan, the father of the respondent herein was working as Motor Driver in Customs and Central Excise Department and while he was in service, died on 07.03.1999. Afterwards, the respondent herein, filed application before the Department on 05.04.1999, seeking compassionate appointment and at that time, he had qualification of XII Standard.



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Thereafter, he completed his Graduate degree in B.Sc. computer science in the year 2001. Subsequently, he made several representations and the Department, vide order dated 11.10.2007, had rejected the claim of the respondent. Hence, he filed original application before the Tribunal and the same was allowed. Challenging the order passed by the Tribunal, the present writ petition has been filed by the Department.

3. The learned counsel for the petitioners submitted that, as per the guidelines prescribed in the DOP & T's OM No.14014/23/99-Estt (D) dated 03.12.1999, the appointment on compassionate grounds be made only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year, that too within the ceiling of 5% of vacancies falling under direct recruitment quota in a Group C or D Posts. Further, as per the modified DOP & T's OM No.14014/19/2002-Estt(D) dated 5.5.2003, the applications for compassionate appointment can be considered for a maximum period of three years from the date of death of government servant. The respondent's father expired on 07.03.1999 and there was no vacancies in Group D and C posts under the



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said quota during the relevant three years period and hence, the respondent was not considered for appointment on compassionate ground and his claim was rejected.

4. The learned counsel for the respondent vehemently argued that, the petitioners/Department has not placed any material before the Tribunal to show the vacancy position for the post of Group D and C during the relevant period, and hence, the Tribunal has rightly passed the order, directing the petitioners to consider the respondent for appointment against the next available Group-D post.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and we have perused the material on record.

6. A perusal of the records shows that, the father of the respondent died on 7.3.1999 and subsequently, the respondent had given a representation on 5.4.1999 seeking compassionate appointment. Subsequently, it was rejected by the department, vide order dated



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11.10.2007 stating that, there was no vacancy arose, during the relevant period of three years from the date of death of the father of the respondent.

The respondent, while filing the original application before the tribunal, challenging the above said order dated 11.10.2007, has stated that, the Department has not made any orders to appoint him, though his name was placed in the compassionate appointment category, whereas, some new appointments were made in the past two-three years. Further, the respondent has contended before the Tribunal that, if no vacancy was available in Chennai office, his claim could have been considered against vacancies in other offices also, as he had expressed his willingness to work anywhere in India.

7. After considering both side arguments and the relevant records, the Tribunal at paragraph No.14, has ordered as follows.

14. It is not clear from the submissions that whether there was any vacancy in Group-D posts for appointment on compassionate ground during the relevant period. If there was any vacancy available for appointment under compassionate ground, in any of the group-D posts, in any of the offices of the respondents, within 3 years from the date of death, the applicant's case could have been considered for appointment.



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In all probability, if such a vacancy was available, it would have been filled up by other candidates by this time. Since the applicant lost the opportunity to be considered for appointment against the Group-D posts due to omission on the part of the respondents to verify the vacancy position in group-D posts, during the relevant period, we direct the respondents to consider the case of the applicant for appointment against the next available group-D post.

As against the above order passed by the Tribunal, now the writ petition is before us.

8. Now the point arises to determine in this case is

Whether there was any vacancy available during the relevant period of three years from 07.03.1999 to appoint the respondent under compassionate ground?

9. When the matter was taken up for hearing, this Court, vide order dated 15.11.2023, has directed the respondent to give appropriate reason for the order passed by the Tribunal at paragraph No.14 as stated supra, by filing additional affidavit.



10. Accordingly, the petitioners/Department had filed the additional affidavit, stating as follows.

4. Addressing the afore said observation (paragraph No.14 of the order of the Tribunal), I humbly state that though not as an averment of material fact in the affidavit, the deponent in Ground G of the affidavit originally filed in the year 2009, accompanying the writ petition, had clearly stated that there were no vacancies.

5. Nevertheless, in compliance to the Court's order, I humbly confirm that for the period fo threeyears from the date of the death of the Government Servant ie., 07.03.1999, no appointments under compassionate grounds were made by any of the offices including Trichy Commissionerate with respect to Group D posts. I further humbly state that though the observation in Para 14 of the O.A.No.190/2010 is with respect to Group D posts, the respondent had completed his under-graduation in the year 2001, making him eligible for Group C post. Even with respect to Group C post, no appointments were made within the period of three years from the date of death of the government servant i.e. 07.03.1999, by the cadre controlling authority.

From the above, it is clear that there was no appointment made under compassionate ground by the Department, in any of the offices, including Trichy Commissionerate during the relevant period of three years from the date of death of the father of the respondent. To deny the above said contention, there was no contrary materials placed before this court by the respondent.



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11. Apart from that, the learned counsel for the petitioners/ Department also contended that, the father of the respondent died on 07.03.1999 itself and the period of 3 years to appoint the respondent on compassionate ground was over on 06.03.2002 itself. Now, after the period of 21 years, he is not entitled to get such appointment on compassionate ground. To support his contention, he has also relied upon the decision of the Hon'ble Supreme Court in Civil Appeal No.6958/2002, dated 30.09.2002. In the above said decision, at paragraph No.9.1. the Apex Court held as follows.

9.1. Applying the law laid down by this Court in the aforesaid decisions *[Mumtaz Yunus Mulani V. State of Maharashtra MANU/SC/7338/2008: (2008) 11 SCC 384; Govind prakash Verma V. LIC , MANU/SCC 1331 2004: (2005) 10 SCC 289: 2005 SCC (L & S) 590]* to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.”



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The above decision of the Hon'ble Supreme Court is squarely applicable to the facts of the case on hand. Therefore, in the light of the above decision and also considering the reasons assigned in the additional affidavit filed by the Department coupled with the relevant rules, we are of the view that the respondent is not entitled for compassionate appointment, after such long time, after the date of death of his father and hence, we have no hesitation to come to the conclusion that the order passed by the Tribunal is liable to be set aside.

12. Accordingly, this writ petition is allowed and the impugned order passed by the Tribunal in O.A.No.190/2008, dated 31.08.2009 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K. J.) (N.S. J.)

24.11.2023

Internet: Yes/No
Index : Yes/No
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To
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High Court, Madras 104.
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