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W.P. No. 6900 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 07.03.2023**

**CORAM**

**THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU**

**W.P. No. 6900 of 2023**

M. Prakash

... Petitioner

-VS-

1. The District Collector,  
Tiruvannamalai District,  
Tiruvannamalai.
2. The Deputy Registrar,  
Co-operative Association Registration Office,  
Cheyyar, Tiruvannamalai District.
3. The President / Secretary,  
Primary Agricultural Co-operative Loan Association,  
Nallore, Vandavasi Taluk,  
Tiruvannamalai District.

... Respondents

**Prayer:-** Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Second and Third Respondents to consider the Petitioner compassionate ground appointment on the Petitioner representation dated 22.07.2019 in his proceedings O.M (A3/519) 2022 dated 02.02.2022 the same has not consider by the Sub-ordinate of Second and Third Respondents.



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For Petitioner : Mr. T.V.G.Kartheeban  
For Respondents : Mr. B.Vijay,  
Additional Government Pleader

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## ORDER

Heard Mr. T.V.G.Kartheeban, Learned Counsel for the Petitioner and Mr. B.Vijay, Learned Additional Government Pleader appearing for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The wife of the Petitioner, viz., S.Anjali Devi, while working as Sales Woman in the Co-operative Society of the Third Respondent, died on 08.06.2019, while in service and a representation dated 22.07.2019 was made by the Petitioner to the First Respondent for appointing him on compassionate grounds. It is claimed that though the First Respondent by Proceedings in O. Mu. (A3)/519/2022 dated 02.02.2022 had forwarded the representation made by the Petitioner for compassionate appointment to the Second Respondent for further action, it did not evoke any response, which has necessitated the Petitioner to approach this Court.



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3. Having due regard to the nature of controversy involved, it must be recapitulated that the legal position is well settled that the claim for compassionate appointment is an exception to Articles 14 and 16 of the Constitution which guarantees equality of opportunity to all eligible citizens to participate in the selection for any public employment. Appointment on the mere ground of descent, would be a direct infraction of Article 16 of the Constitution. The exception on which compassionate appointment is sustained is for the reason that it seeks to tide over the sudden crisis in the family of the deceased bread winner. The principles governing compassionate appointment have been succinctly explicated by the Hon'ble Supreme Court of India in ***State of West Bengal -vs- Debabrata Tiwari*** (Order dated 03.03.2023 in Civil Appeal Nos. 8842 to 8855 of 2022) in the following words:-

*“7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:-*

- (i) *That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must*



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*be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.*

- (ii) Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.*
- (iii) Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.*
- (iv) That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.*
- (v) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and*



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*marital status of its members, together with the income from any other source.*

*7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking*



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*compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.”*

Apart from failing to produce any scheme for compassionate appointment in the Co-operative Society of the Third Respondent, the Petitioner, who was himself aged about 35 years at the time of demise of his wife as per the Legal Heirship Certificate produced by him, ought to have got himself suitably employed by then and nothing prevented him from applying for recruitment to any post depending upon his competence. It is apparent that the family of the deceased employee has been able to tide over the crisis with the passage of time and if any indulgence is shown brushing aside the germane aspects highlighted supra, it would unwittingly tantamount to unduly favouring the Petitioner to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced.

4. It would be evident from the foregoing discussion that the Petitioner neither has any enforceable right to claim appointment on compassionate grounds from the Respondents, nor the Respondents have any legal obligation



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to take a decision on granting the same to him. In this backdrop, reference must be made to the ruling of the Hon'ble Supreme Court of India in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], in which it has been expounded as follows:-

*"17. ....One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any*



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*person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs- State of U.P.** (AIR 1962 SC 1183) ). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."*

As such, there is absolutely no justification for issuing any direction to take further action on the Proceedings No. O. Mu. (A3)/519/2022 dated 02.02.2022 from the First Respondent to the Second Respondent forwarding futile representation of the Petitioner in which the relief claimed by him cannot at all be considered by the concerned authorities.

5. Though obvious, it is clarified that refusal by the Court to entertain this Writ Petition shall not be construed as precluding the Petitioner, if he is otherwise eligible and not disqualified, from participating in any recruitment for public appointment following the prescribed procedure.



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In the result, the Writ Petition is dismissed with the aforesaid observations. No costs.

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Index: Yes/No

Neutral Citation: Yes/No

**Note: Issue order copy by 26.02.2024.**

To

1. The District Collector,  
Tiruvannamalai District,  
Tiruvannamalai.
2. The Deputy Registrar,  
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**P.D. AUDIKESAVALU, J.**

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