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W.P. No. 8261 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

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

W.P. No. 8261 of 2023

Arul Selvan

... Petitioner

-VS-

1. The Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005.

2. The Commercial Tax Officer,
Commercial Taxes Department,
Vellore- 632 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus to direct the Second Respondent herein to consider the representation of the Petitioner dated 12.12.2022.

For Petitioner : Mr. R.Sathish Kumar

For Respondents : Mrs. E.Ranganayaki
Additional Government Pleader

ORDER

Heard Mr. R.Sathish Kumar, Learned Counsel for the Petitioner and
Mrs. E.Ranganayaki, Learned Additional Government Pleader appearing for the



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Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The father of the Petitioner, viz., K.Rajan, who was employed as Account Assistant in the office of the Second Respondent, died in harness on 03.08.2003 leaving behind the following legal heirs as per the Legal Heirship Certificate dated 22.08.2003 produced by the Petitioner:-

S. No.	Name of the Legal Heir	Relationship with the deceased employee	Age as on 22.08.2003
1.	Tmt. R.Kumari	Wife	32
2.	Selvi. R.Karthiga	Daughter	15
3.	Selvan R.Ragavendran	Son	13
4.	Selvan. R.Arutselvan	Son	11

The Joint Commissioner (ST), Vellore Division by Proceedings No. Naka. Aa2/ 13263/2008 dated 16.12.2013 had appointed one R.Karthiga, who is the eldest daughter of the said deceased K.Rajan, as Junior Assistant on compassionate grounds and she had joined duty on the forenoon of 20.12.2013. However, as she had absented from duty for a long period, she was inflicted with the punishment of dismissal from service by Proceedings No. A3/4661/2021 dated 01.11.2022 by the Joint Commissioner (ST), Vellore Division. Thereafter, the Petitioner had made a representation dated 12.12.2022 for compassionate appointment as legal heir of the said deceased K.Rajan in the place of the said



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R.Karthiga, but it did not evoke any response, it has necessitated the filing of this Writ Petition.

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. It is equally trite that the appointing authority cannot be expected to keep a post vacant waiting for the dependent, who is a minor at the time of death of the employee, to attain majority to seek such appointment when the relevant Governmental Orders envisage that the application for compassionate appointment has to be made within three years from the date of death of the deceased employee. It would obviously mean that it was only those of the family members of the deceased employee, who were eligible at the time of his demise, who could be considered for such appointment, and it is not an indefeasible right that can be exercised by a minor on attaining majority. This



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view is fortified by the decisions of the Hon'ble Supreme Court of India in

Union of India -vs- Bhagwan Singh [(1995) 6 SCC 476], *Haryana State Electricity Board -vs- Hakim Singh* [(1997) 8 SCC 85], *Sanjay Kumar -vs- State of Bihar* [(2000) 7 SCC 192], *Syed Khadim Hussain -vs- State of Bihar* [(2006) 9 SCC 195], *National Institute of Technology -vs- Niraj Kumar Singh* [(2007) 2 SCC 481], *Mukesh Kumar -vs- Union of India* [(2007) 8 SCC 398], *Shreejith -vs- Deputy Director (Education), Kerala* [(2012) 7 SCC 248] and *Vijaya Ukarada Athor (Athawale) -vs- State of Maharashtra* [(2015) 3 SCC 399].

4. That apart, 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*



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being made without following the said procedure, it is in the nature of an exception to the general provisions and must 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*



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income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and 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



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so, the object of the scheme of compassionate would be frustrated.

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Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking 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.”

In view of the said legal position, it cannot be said that the Petitioner was suffering from any hardship, especially when his sister had been granted compassionate appointment on the death of their father and she had subsequently abandoned from duty. Inasmuch as the sister of the Petitioner was removed from service only when he was 28 years of age, the Petitioner 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 now shown after 19 years from the time of death of the deceased employee 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



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suffering may be comparatively of higher magnitude, which cannot be countenanced.

5. 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 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.



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*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 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 dispose the futile representation dated 12.12.2022 made by the Petitioner in which the relief claimed by him cannot at all be considered by the concerned authorities.



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6. 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.

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

20.04.2023

kst

Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 26.02.2024.

To

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Chennai – 600 005.

2. The Commercial Tax Officer,
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P.D. AUDIKESAVALU, J.

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