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W.P. No. 8124 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. 8124 of 2023

P.Gayathri

... Petitioner

-vs-

- 1 The Principal Secretary
to the State of Tamil Nadu Social Welfare
Department Secretariat Fort St.George
Chennai 09
- 2 The social Welfare Board
Rep. by its chairman Chepauk Chennai 05
- 3 The Commissioner
Social Welfare Commissionerate Panagal
Maligai Saidapet Chennai 15
- 4 The Director
Social Welfare Commissionerate
Panagal Maligai 2nd Floor Saidapet Chennai 15
- 5 The Tahsildar
Tahsildar office Perambur Taluk Chennai 11.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned order passed by the 4th respondent in his proceeding in Na.Ka.No.5470/ Est. 4(3) / 2019 dated 15.11.2022 and quash the same as an unjust and illegal and consequently direct the respondents 1 to 4 to provide employment to the petitioner under compassionate appointment.



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For Petitioner : Mr. A.Arumugam
For Respondents : Mr. B.Vijay,
Additional Government Pleader

ORDER

Heard Mr. A.Arumugam, 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 mother of the Petitioner, viz., P.Devika, who was employed as Assistant in the office of the Second Respondent, died in harness on 13.02.2019 leaving behind the following legal heirs as per the Legal Heirship Certificate produced by the Petitioner:-

S. No.	Name of the Legal Heir	Relationship with the deceased employee	Age as on 13.02.2019
1.	N.Pandurangan	Husband	57
2.	P.Gayathri	Daughter	23
3.	P.Ezilarasi	Daughter	15

The Petitioner had made an application for compassionate appointment on 19.02.2019 along with requisite documents, but it was rejected by Proceedings in Na. Ka. No. 5470/Niru4(3)/2019 dated 15.11.2022 passed by the Fourth Respondent holding that the yearly income of the family of the deceased



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employee after her demise was Rs. 2,52,000/-, which was beyond the ceiling limit of Rs. 2,00,000/- stipulated in G.O. Ms. No. 18, Labour and Employment Department dated 23.01.2020 issued by the Government of Tamil Nadu, which is challenged in 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. 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 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.*



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(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 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*



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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 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, the Petitioner cannot be said to be suffering from any hardship, especially when there is nothing to show that her father, who was 57 years at the time of the death of the deceased employee, was not having any permanent employment. Moreover, the Petitioner herself was aged about 23 years at the time of demise of her mother as per the Legal Heirship Certificate produced by her and she ought to have got herself suitable for employment by then and nothing prevented her from applying for recruitment to any post depending upon her competence. It is apparent that the family of the



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deceased employee has been able to tide over the crisis with the passage of time and if any indulgence is now 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. Further, it has been laid down by the Hon'ble Supreme Court of India in the said decision that compassionate appointments have to be made only in accordance with a scheme governing the same, and the Respondents have declined to entertain the claim made by the Petitioner relying on clause under the head 'Family to be indigent circumstances to be eligible under compassionate ground appointment' in G.O. Ms. No. 18, Labour and Employment Department dated 23.01.2020 issued by the Government of Tamil Nadu stipulating that the annual income of the family of the deceased employee exceeds the upper limit of Rs. 2,00,000/- fixed in that regard. Viewed from that perspective, there does not appear to be any infirmity in the impugned order passed by the Fourth Respondent requiring interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

4. Though obvious, it is clarified that refusal by the Court to entertain this Writ Petition shall not be construed as precluding the Petitioner, if she is



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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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to the State of Tamil Nadu Social Welfare
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Chennai 09
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P.D. AUDIKESAVALU, J.

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