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W.P. No. 8248 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. 8248 of 2023

M.Nanda Kumar

... Petitioner

-vs-

1 The Commissioner of school Education
DPI Complex college Road chennai
600 006

2 The District Educational Officer
Thirupathur Thirupathur District

3 The Head Master
Government Higher secondary School Gingee
Via Latcheri Thirupathur Distirct

4 The District Education Officer
Vellore, Vellore District

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus Calling for the reocrds relating to the order dated 23.02.2023 made in Na.Ka.No. 3163 / A1 / 2022 on the file of the District Educational officer vellore vellore District the 4th respondent herein and quash the same and consequently direct the 4th respondent to process the application of the petitioner dated 04.05.2009 in accordance with G.O.Ms.No. 18 Labour and Employment dated 23.01.2020 for compassionate ground appointment within a time frame as may be fixed by this Court.



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For Petitioner : Mr. A.V.Arun
For Respondents : Mr. S.Rajesh,
Government Advocate

ORDER

Heard Mr. A.V.Arun, Learned Counsel for the Petitioner and Mr. S.Rajesh, Learned Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The father of the Petitioner, viz., B.Mani, who was employed as Physical Education Teacher in Government Higher Secondary School, Gingee, Vellore, died in harness on 17.10.2006 leaving behind the following legal heirs:-

S. No.	Name of the Legal Heir	Relationship with the deceased employee
1.	M. Santha	Mother
2.	M.Kavitha	Daughter
3.	M.Rajesh	Son
4.	M. Nanda Kumar	Son

The Petitioner had made an application for compassionate appointment on 04.05.2009 within a period of three years from the time of death of the deceased employee, but it was returned on various occasions pointing out



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certain defects, which are said to have been duly complied from time to time.

This Court by order dated 22.08.2022 in W.P. No. 4518 of 2022 and another order dated 21.12.2022 in W.P. No. 34171 of 2022 had issued directions to consider the said application for compassionate appointment in accordance with G.O. Ms. No. 18, Labour and Employment Department dated 23.01.2020 issued by the Government of Tamil Nadu. Ultimately, the Fourth Respondent by Proceedings in Na. Ka. No. 3163/ A1/2022 dated 23.02.2023 has declined the claim of the Petitioner as a long period beyond three years has lapsed from the time of death of the deceased employees, 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



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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.*



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- (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 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*



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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 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 he was himself aged about 26 years at the time of demise of his father and he ought to have got himself



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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 16 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 suffering may be comparatively of higher magnitude, which cannot be countenanced. Viewed from that perspective, there does not appear to be any infirmity in the impugned order passed by the Second 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 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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kst

Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 26.02.2024.

To

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P.D. AUDIKESAVALU, J.

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