



W.P. No. 8992 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. 8992 of 2023

A.Selvam

... Petitioner

-VS-

- 1 The State of TamilNadu
Rep. by its Secretary to Government
Highways Department Secretariat Chennai-9.
- 2 The Principal Director
Highways Department Guindy Chennai-25.
- 3 The Superintending Engineer
Highways Department construction and
maintenance Salem-302.
- 4 The Divisional Engineer
Highways Department Salem-7.
- 5 The Divisional Engineer
Highways Construction and Maintenance
Edappadi Division.
- 6 The Assistant Divisional Engineer
Highways Department Sankagiri
Salem District.

... Respondents



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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 records pertaining to the impugned order passed by the 2nd respondent in Ref. No. Notification No.12161/ nir7/2018 dated 30.11.2022 and quash the same and consequently direct the respondents to provide employment to the petitioner on compassionate grounds to any suitable post by following the comprehensive guidelines prescribed in G.O. Ms. No.18 Labour and Employment (Q1) Department dated 23.01.2020 within a timeframe fixed by this Court.

For Petitioner : Mr. S.Viswanathan
For Respondents : Mrs. R.Anitha,
Special Government Pleader

ORDER

Heard Mr. S.Viswanathan, Learned Counsel for the Petitioner and Mrs. R.Anitha, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The brother of the Petitioner, viz., A.Shanmugam, who had been engaged as 'Salai Paniyalar' under the Sixth Respondent, had died in harness on 05.11.2002 leaving behind his parents, the Petitioner, who is his elder brother, and a sister. The mother of the Petitioner had made a representation dated



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19.01.2007 seeking compassionate appointment for the Petitioner and though that proposal was recommended by various authorities, no favourable response was received. Ultimately, the Second Respondent by Proceedings No. 12161/Nir/2018 dated 30.11.2022 had rejected the claim of the Petitioner as he had crossed the upper age limit prescribed for that post. In this backdrop, the Petitioner has filed this Writ Petition challenging the said order relying on the the decision of the Division Bench of this Court in ***Secretary to Government of Tamil Nadu -vs- G.Parthiban*** (Order dated 16.10.2015 in W.A. No. 1565 of 2015) holding that relaxation of age ought to be extended in compassionate appointment and has sought for consequential directions for appointing him in a suitable post following the comprehensive guidelines prescribed in G.O. Ms. No. 18, Labour and Employment Department dated 23.01.2020 issued by the Government of Tamil Nadu, within the time frame that may be fixed by the Court.

3. Having 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



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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*



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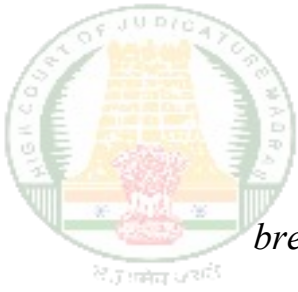
scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

(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 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



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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 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.”



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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 34 years at the time of demise of his brother and he 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 20 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. It is needless to clarify here that the decision of the Division Bench of this Court in *Secretary to Government -vs- G.Parthiban* (Order dated 16.10.2015 in W.A. No. 1565 of 2015), which is not in consonance with the dictum laid down by the Hon'ble Supreme Court of India in *State of West*



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Bengal -vs- Debabrata Tiwari (Order dated 03.03.2023 in Civil Appeal

Nos. 8842-8855 of 2023), cannot confer any right on the Petitioner to seek compassionate appointment by relaxation of the age limit contrary to the scheme for compassionate appointment.

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.

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.



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P.D. AUDIKESAVALU, J.

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