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W.P. No. 11333 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. 11333 of 2023

A.Gowthaman

... Petitioner

-VS-

1 The Commissioner
Directorate of Rural Development
Chennai.

2.The District Collector
Collectorate, Salem District.

3.The District Development Officer
Panchayat Union Office, Mecheri
Salem District.

4.The Commissioner
Panchayat Union
Mecheri, Salem District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari to call for the records pertaining to the order passed by the respondent-2 dated 02.11.2022 in Na.Ka.No.24510/2022 Ni.3 and quash the same and consequently direct the respondents to issue appointment of job to the petitioner under compassionate ground.



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For Petitioner : Mr. P.Govindarajan

For Respondents : Mrs. R.Anitha,
Special Government Pleader
(for R1 to R3)

Mr. V.Jeeva Giridharan,
Additional Government Pleader (for R4)

ORDER

Heard Mr. P.Govindarajan, Learned Counsel for the Petitioner, Mrs. R.Anitha, Learned Special Government Pleader appearing for the First to Third Respondents and Mr. V.Jeeva Giridharan, Learned Additional Government Pleader for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The father of the Petitioner, viz., R.Ayyandurai, who was employed as Village Welfare Officer Level 1 in Mechery Panchayat Union, died in harness on 17.07.2000 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 17.07.2000
1.	Tmt. Devaki	Wife	33
2.	Selvi. Kowsalya	Daughter	13
3.	Selvi. Sangeetha	Daughter	12
4.	Selvan. Gowthaman	Son	11
5.	Tmt. Govindammal	Mother	70



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According to the Petitioner, his mother had made applications on 22.04.2002 and in October 2007 seeking compassionate appointment on his behalf, but it was not entertained on the ground that he was minor and did not possess the requisite qualifications. After attaining the age of majority, the Petitioner, who had completed Diploma in Civil Engineering on 15.06.2011, made a fresh application for compassionate appointment, but it was rejected by Proceedings No. O. Mu. 26045/2012/Ni3 dated 11.07.2012 passed by the Second Respondent stating that it had not been made within three years from the time of death of the deceased employee, and due to ignorance and lack of guidance, the Petitioner had not challenged the same. Subsequently, when the Petitioner made another application on 01.06.2022 seeking compassionate appointment, it was rejected by Proceedings in Na. Ka. No. 24510/2022/Ni3 dated 02.11.2022 passed by the Second Respondent stating that compassionate appointment could not be granted after a lapse of 20 years, which is assailed 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



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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 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



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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 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.*



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



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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 compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must*



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weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.”

In the light of the said principles, it becomes 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 22 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. Further, the Petitioner cannot resurrect the stale claim by making fresh representation after the same had already been rejected by Proceedings No. O. Mu. 26045/2012/Ni3 dated 11.07.2012 passed by the Second Respondent, as pointed out by the Hon'ble Supreme Court of India in ***C.Jacob -vs- Director of Geology & Mining*** [(2008) 10 SCC 115]. 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.



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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.

To

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Directorate of Rural Development
Chennai.

2.The District Collector
Collectorate, Salem District.

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P.D. AUDIKESAVALU, J.

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