



W.P.No.13703 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.07.2023

Delivered on: 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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&

W.M.P.No.14540 of 2021

Union of India rep by
1.Chief Postmaster General
Tamilnadu Circle
Chennai-600 002

2.Postmaster General
Chennai City Region
Chennai-600 002

3.Senior Superintendent of Post Officers
Tambaram Division
Chennai-600 045

... Petitioners

Vs.

1.B.Premkumar

2.Central Administrative Tribunal
Rep by its Registrar
City Civil Court Complex
Chennai-600 104

.. Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records from the 2nd respondent Central Administrative Tribunal, Chennai relating to the order dated 06.07.2018 in Original Application No.310/008382017 and quash the same as illegal, arbitrary, without jurisdiction.

For Petitioner : Mr.K.Srinivasa Murthy

For Respondents : Mr.P.R.Sathyanarayanan for R1

ORDER

(Judgment of the Court was made by P.B.BALAJI,J.)

The Writ Petition has been filed for issuance of a Writ of Certiorari to quash the order of the Central Administrative Tribunal in O.A.No.310/008382017 dated 06.01.2018 as illegal, arbitrary and without jurisdiction.

2. The brief facts that are necessary for disposal of the Writ Petition are as follows:

The 1st respondent's father one L.Bakthavatchalu was working as Postman at Avadi IAF SO and he expired on 13.05.1997, while he was in service. His wife, i.e mother of the 1st respondent preferred a claim for



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compassionate appointment. However, her claim was not considered as she did not possess the required qualification. The 1st respondent, son of the deceased was a minor at that time. After he attained the age of majority, he made an application for compassionate appointment in the year 2010.

3. The petitioner, in order to ensure transparency in processing compassionate claims introduced a Relative Merit Points Scheme (RMPS) on 20.01.2010, factoring various attributes like Family Pension, Terminal benefits, monthly income of earning members, assets owned, number of dependents, number of unmarried daughters, number of minor children and left over service etc., including 15 grace points for the widow of the deceased. This was brought about to ensure transparency as well as uniformity in deciding compassionate claims. Based on the said scheme, all pending cases were re-examined and since the petitioner did not qualify with sufficient marks and many other applicants scored more marks than him, the decision was communicated to the 1st respondent on 13.08.2012. Even in the next meeting of the Circle Relaxation Committee(CRC) held in 2015, the 1st respondent's case was considered and even then he did not come under the eligibility zone and the said decision was also duly



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communicated by the 1st respondent on 08.10.2015. After lapse of two years, the 1st respondent forwarded a representation dated 04.05.2017 to the 1st petitioner to reconsider his case once again. The said representation was disposed of by the 1st petitioner on 12.05.2017, rejecting his claim and the 1st respondent was also informed that in view of RMPS, his case would again be considered in the next Circle Relaxation Committee meeting, along with other cases. Aggrieved by the said communication of the 1st petitioner, the 1st respondent filed O.A.No.838 of 2017 before the Central Administrative Tribunal, Chennai. The Tribunal in and by order dated 05.07.2018 directed the petitioners to consider the case of the 1st respondent. The said order is under challenge in the present Writ Petition.

4. Amongst several ground raised by the petitioners, it is mainly contended that unless the 1st respondent comes within the zone of consideration as per merits point and within 5% vacancies reserved for compassionate appointment under direct recruitment, the question of considering the petitioner's case for compassionate appointment would never arise. The other main contention raised in the Writ Petition is that the Central Administrative Tribunal had held that the relative merit point



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should be awarded with reference to the penurious condition on the date of death of the employee, which would have brought him within the zone of consideration. According to the petitioners, vacancies were filled up in 2015 itself and the 1st respondent chose to file O.A only in 2017 and according to the petitioner, the introduction of merit point system on 20.01.2010 was only in the nature of a comprehensive guidelines reiterating the earlier instructions issued by the DOPT's OM on 09.10.1998 which was framed only subsequent to in pursuance of the observations of the Hon'ble Supreme Court in the case of ***Umesh Kumar Nagpal Vs. State of Harayana and other*** reported in ***1994(3) SC 525***. It is also contended by the petitioners that the particular cases for compassionate appointment can be considered only in terms of policy decision, prevailing at the time of consideration and the scheme does not create any legal right with the candidate to claim compassionate appointment as a matter of right.

5. We have also perused the counter affidavit filed by the 1st respondent in which the 1st respondent has only reiterated the contentions put forth by him in the O.A before the Tribunal and also justifying the reasoning of the Tribunal, seeking dismissal of the Writ Petition.



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6. Heard Mr.K.Srinivasa Murthy, learned counsel for the petitioners and Mr.R.P.Sathyanarayanan, learned counsel for the 1st respondent.

7. At the outset, this Court is conscious of the fact that compassionate appointment cannot be sought as a matter of right. It is only a special concession shown by the petitioners to help the family of a deceased employee of the petitioners, especially one who has died during his service. The law in this point is fairly well settled by catena of judgments of the Hon'ble Supreme Court as well as this Court.

8. However, with regard to the case on hand, it is not a case that can be categorised as one seeking compassionate appointment. On the contrary, it is one falling under a scheme that has been framed by the petitioners, providing for 5% of the total vacancies to be filled up on applying Relative Merit Points. The scheme, in a way is a departure from the regular policy with regard to compassionate appointment. There is no limitation for consideration of a request for compassionate appointment under the scheme. A request can be kept pending and moved over to the next year or subsequent years, subject to the total compassionate appointments not



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exceeding 5% of the direct recruitment Group 'C' quota in a particular year.

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We have also perused the Relative Merit Points dated 20.01.2010.

9. We have also examined the revised consolidated instructions issued by way of an Office memorandum dated 09.10.1998. The scheme itself is actually a relaxation to benefit family members of the deceased employees to be considered for appointment on compassionate basis notwithstanding the date of death of the employee. In order to consider such cases, 5% has been fixed from and out of the direct recruit vacancies for a particular year. It is also stated that belated requests would be dealt with greater caution since several economic factors may come into play in the interregnum period. The scheme is also not confined to the concerned Ministry of department or office in which the deceased was working, but such appointment can be given anywhere under the Government of India, subject to vacancy meant for the purpose of compassionate appointment. Thus, it can be seen that the scheme itself a very laudable exercise undertaken by the Union Government to come to the aid of the family of the deceased, especially where the family has been financially suffering.

10. The 1st respondent has made a request which has not been outright



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turned down by the petitioners. Only in view of the fact that the 1st respondent did not fall within the 5% zone, his case was moved over to the subsequent period and this is in line with the procedure being adopted by the petitioners and the same cannot be faulted. Equally, the case of the 1st respondent that the merit points should be avoided on the date of the demise of the employee and not the date of consideration cannot be accepted for the simple reason that the scheme cannot be given retrospective effect. Moreover, the compassionate appointment is granted only on considering several factors including the economic status and financial constraints of the surviving family members. While, this being the position, the relevant date of consideration can only be the date of considering the application for compassionate appointment and cannot relate back to the date of death of the employee at which point of time circumstances would have been entirely different and the same cannot be the yardstick to be applied at that point of time when the compassionate appointment is being considered.

11. The Tribunal unfortunately has imposed its views and directed that a particular mark should be awarded to the petitioner and that too



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based on the date of death of the petitioner's father. The approach of the Tribunal is therefore clearly erroneous and defeats the very RMPS itself. We also find from the records that petitioners have applied their mind and awarded merit points only in line with RMP Scheme and such a procedure cannot be found fault with. As already pointed out by us, compassionate appointment is within the domain of the employer and the petitioners cannot be compelled to give appointment, especially in a case of this nature . All relevant factors have been taken into consideration and the case of the 1st respondent has only been kept alive and not rejected, which according to us is wholly justified and does not call for any interference.

In fine, the order of the Central Administrative Tribunal is liable to be set aside and accordingly set aside and the Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

(D.K.K.J) & (P.B.B.J)
25.07.2023

Internet : Yes
Index: Yes/No

D.KRISHNAKUMAR, J.,
and



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Pre-delivery order in
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