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WP.No.19727 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUIMAR

WP.No.19727 of 2023

Mohammed Ali Jinna

.. Petitioner

Versus

1.The Collector
Coimbatore
Coimbatore District

2.The Tahsildar
Coimbatore North
Coimbatore District

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Order of the first respondent in Na.Ka.24309/2020/A6 dated 29.12.2020 and quash the same and direct the respondent to consider the petitioner for appointment on compassionate appointment in any suitable post commensurate with the petitioner's qualification.

For Petitioner : Mr.R.Vijayakhumar

For Respondents : Mr.V.Jeevagiridharan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the Order of the first respondent in Na.Ka.24309/2020/A6 dated 29.12.2020, quash the same and



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consequently, direct the respondent to consider the petitioner for appointment on compassionate appointment in any suitable post commensurate with the petitioner's qualification.

2. According to the petitioner, at the time of his father's death during 1997, himself and his brother, both were minor. The petitioner's mother gave representations on 30.07.2018 and 25.02.2020, upon which, the impugned order has been passed rejecting the petitioner's representation on the ground that the same was not filed within the period of three years. Challenging the same, this writ petition.

3. Heard both sides and perused the materials placed on record.

4. It is relevant to note that the very object of providing compassionate appointment is to alleviate the distress of the family in need and immediate sustenance to maintain the family. The very allegation of the representation, itself clearly indicate that the father died in the year 1997, thereafter, the petitioner's mother submitted a representation on 30.07.2018 that too after a lapse of 21 years. Such view of the matter, since the compassionate appointment is the exception to the general rule, the same cannot be claimed as



a matter of right. Thus, this Court is of the view that the lapse of time is also a ground to draw a factual inference that the penurious circumstances aroused on account of the sudden death became vanished. Thus, the scheme of compassionate appointment cannot be extended beyond the reasonable period, more so, after a lapse of 21 years. Even the Honourable Supreme Court in the case of *State of Uttar Pradesh and Others vs. Premlata* [(2022) 1 SCC 30], has made observations in respect of implementation of the scheme of compassionate appointment. For better appreciation, the relevant portion of the observations are extracted hereunder:

“8. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in State of Karnataka vs. V.Somayashree [(2021) 12 SCC 20], had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C.Santhosh vs. State of Karnataka [(2020) 7 SCC 617], this Court has summarized the principle governing the grant of appointment on compassionate ground as under:

10.1. That the compassionate appointment is an exception to the general rule;

10.2. That no aspirant has a right to compassionate appointment;

10.3. The appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

10.4. Appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;



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10.5. *The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.*

9. *As per the law laid down by this Court in a catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.*

9.1. *In the case of H.P. v. Shashi Kumar [(2019) 3 SCC 653], this Court in paras 21 and 26 had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this Court in Govind Prakash Verma vs. LIC [(2005) 10 SCC 289], it is observed and held as under:*

“21. The decision in Govind Prakash Verma, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee



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dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non~manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.?

“26. The judgment of a Bench of two Judges in Mumtaz Yunus Mulani vs. State of Maharashtra [Mumtaz Yunus Mulani



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v. State of Maharashtra, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

5. In view of the facts and circumstances, the petitioner is not entitled for the appointment on compassionate ground. Thus, there is no infirmity as such in respect of the Order impugned passed by the first respondent in this writ petition.

6. Accordingly, this writ petition stands dismissed. No costs.

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Index:Yes/No

Internet: Yes/No

Neutral Citation:Yes/No

To

1.The Collector

Coimbatore

Coimbatore District

2.The Tahsildar

<https://www.mhc.tri.gov.in/judis>



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N.SATHISH KUMAR, J.

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