



W.A.No.2645 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

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M.Gnanavel

... Appellant

Vs.

1.The Director of School Education,
College Road,
Chennai - 600 006.

2.The District Education Officer,
Villupuram District,
Villupuram - 605 102.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 26.08.2022 passed by the learned Judge in W.P.No.32385 of 2014.

For Appellant

: Dr.E.Muralidharan

For respondents

: Mr.S.Silambanan

Additional Advocate General

Assisted by Mr.S.Yashwanth

Additional Government Pleader



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal is directed against the order of dismissal dated 26.08.2022 passed by the learned Judge in W.P.No.32385 of 2014.

2. For the purpose of disposal of this appeal, facts of the case which are germane and necessary, are stated as under:

2.1. The appellant's father V.Mayakrishnan, who was working as a Headmaster in Panchayat Union Elementary School, Ammanankuppam, Kandamangalam, Villupuram District, died in harness on 04.05.1995, leaving behind his wife, four daughters and four sons as his legal heirs. The appellant being one of the sons of the deceased employee, applied for compassionate appointment on 30.10.1995 to the second respondent. However, the said application was returned for want of certain details and documents, which were duly complied with by the appellant. Even thereafter, no action was taken on the same. Hence, the appellant filed W.P.No.3073 of 2006, which was disposed on 17.09.2009, with a direction to the appellant to produce the required documents as called for by the second respondent and on production of the same, the second respondent should consider the appellant's claim and pass orders on merits and in accordance with law.

2.2. Pursuant to the aforesaid order, the appellant furnished all the



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details and documents to the second respondent. But, *vide* order dated 18.03.2010, the second respondent rejected the appellant's application on the ground that the elder son of the deceased was alive and as such, the juniors are not entitled to make application. Aggrieved by the same, the appellant preferred WP.No.3056 of 2011, which by order dated 17.10.2012, was allowed by quashing the order of the second respondent and remitting the matter for fresh consideration.

2.3. Thereafter, the claim of the appellant seeking compassionate appointment was reconsidered by the second respondent and was ultimately, rejected by order dated 26.02.2013, on the premise that the appellant's family was not in indigent circumstances and they possess immovable properties and are deriving income from such immovable properties. Challenging the said order dated 26.02.2013, the appellant filed the instant writ petition in W.P.No.32385 of 2014, which was dismissed by the learned Judge on 26.08.2022 stating that the family possess immovable properties and the appellant is over aged and hence, he is ineligible for appointment on compassionate grounds. Feeling aggrieved, the appellant is before this court with the present appeal.

3. The learned counsel for the appellant made his submissions, assailing the order passed by the learned Judge on the two grounds viz., the appellant is not an indigent person and he is over-aged.



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3.1. Insofar as the first ground relating to non-indigent person, is concerned, it is submitted by the learned counsel that the Tahsildar vide report dated 01.01.2001 stated that the appellant owns 3.30 acres of agricultural land, thereby earning a sum of Rs.80,000/- per year, however, the learned Judge observed, as if the appellant was earning a sum of Rs.80,000/- per month. Further, in the earlier two writ petitions filed by the appellant viz., W.P.No.3073 of 2006 and W.P.No.3056 of 2011, the learned Judges decided the matters in favour of the appellant and directed the respondents to consider the application of the appellant seeking appointment on compassionate grounds. By overlooking those two orders, the learned Judge passed the order impugned in this appeal, dismissing the writ petition filed by the appellant, which amounts to violation of Doctrine of *Stare Decisis*. In support of the same, the learned counsel has referred to the following decisions of the Apex Court:

(i) In ***Union of India v. S.K.Kapoor [Manu/SC/0246/2011]***, it was held that it is well settled that if a subsequent co-ordinate bench of equa strength wants to take a different view, it can only refer the matter to a larger bench, if a bench takes a contrary to the settled decision, is a judgement per incuriam.

(ii) In ***Government of A.P. and another v. B.Satyanarayana Rao [(2000) 4 SCC 262]***, it was held that the rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any



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statute while deciding that issue.

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3.2. Regarding the ground of over-aged, it is contended by the learned counsel for the appellant that the father of the appellant died on 04.05.1995 and the appellant applied for compassionate appointment on 30.10.1995 and during that time, the appellant was only 23 years, and now, the age of the appellant is 50 years and the delay of 27 years was due to the inaction and dubious acts of the respondents and the lapse of time due to judicial process. Thus, the reasons for the delay are absolutely not on the part of the appellant and hence, the same cannot be fastened upon him. In support of the said contention, the learned counsel has placed reliance on the decisions of the Apex Court in **(i) Malaya Nanda Sethy v. State of Orissa [2002 LiveLaw (SC) 522]** and **(ii) Chief General Manager Telecommunications, BSNL and others v. Vidya Prasad [(2021) SCC OnLine SC 840];** and the order in **T.Aruljothi v. The Director of School Education, DPI Campus, Chennai & Others [(2021) 5 MLJ 538]** rendered by one of us (RMDJ).

3.3. Continuing further, the learned counsel for the appellant submitted that the appellant belongs to a poor agricultural family of downtrodden community and he met with a road accident and due to the same, his left leg below the knee got injured resulting in 40% disability. Stating so, the learned counsel prayed to set aside the order passed by the learned Judge and to direct



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the authorities to consider the case of the appellant for compassionate appointment to the post of Junior Assistant / Clerk, for which he is well qualified, on humanitarian grounds.

4. *Per contra*, the learned Additional Advocate General appearing for the respondents would submit that the Government has reviewed the earlier orders and formulated the guidelines/conditions and issued consolidated instructions in G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020 and according to the said G.O., the appellant is not eligible for concession under compassionate grounds, as the family of the appellant was not in indigent circumstances. The learned Additional Advocate General further submitted that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis and it cannot be claimed as a matter of right. Thus, according to him, the learned Judge, on a proper appreciation of facts, rightly dismissed the writ petition, by the order impugned in this appeal, which warrants no interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the materials available on record, carefully and meticulously.

6. It is seen from the order impugned herein that the learned Judge



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rejected the claim of the appellant seeking appointment on compassionate grounds stating that the family of the appellant was not in indigent circumstances, as he was earning income at Rs.80,000/- per month through agricultural land. The main contention of the learned counsel for the appellant is that the appellant's income was Rs.80,000/- per annum, whereas the same was misquoted as Rs.80,000/- per month by the learned Judge. To substantiate the same, he drew the attention of this court to the Tahsildar's report dated 01.01.2001 which clearly stated that the appellant possesses 3.30 acres of agricultural land and earns an annual sum of Rs. 80,000/-. However, this court is of the view that such a contention cannot support the claim of the appellant seeking compassionate appointment, as it is evident from the Tahsildar's report of the year 2001 that the appellant owns 3.30 acres of agricultural land and earns Rs.80,000/- per year, which does not fall under the category of an indigent person. Even the income certificate dated 21.06.2023 recently obtained from the Tahsildar, Vikkiravandi Taluk, Villupuram District, as to the present financial position of the appellant, would disclose that his family's annual income is Rs.90,000/- per annum, which also does not meet out the requirement that he is in indigent circumstances and therefore, the appellant is ineligible to be considered for compassionate appointment.

7. Admittedly, the application seeking compassionate appointment was



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originally, submitted by the appellant at the age of 23 years, to the second respondent on 30.10.1995. After several rounds of litigation, the order impugned in the present appeal has been passed in the year 2022, ultimately, rejecting the claim of the appellant. As of now, the appellant is certainly over aged. Hence, it is not feasible for considering his candidature for appointment at this length of time. In this context, it will be useful to refer to the decision of the Hon'ble Supreme Court in ***Fertilizers and Chemicals Travancore Ltd., & Ors., Vs. Anusree K.B., [2022 LiveLaw (SC) 819]***, wherein, it was held that *"the appointment on compassionate ground made after a period of 24 years from the death of the deceased employee, shall be against the object and purpose for which the same is provided"*. The relevant passage of the said judgment reads as follows:

"7. 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 the case of Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704, 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 summarised the principle governing the grant of appointment on compassionate ground as under:-

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) 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;



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(iv) *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;*

(v) *the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.*

8. *As per the law laid down by this Court in 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. 8.1 In the case of State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:-*

"21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, 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 [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

"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 dying in harness and leaving his family in penury and without



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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 v. State of Maharashtra [(2008) 11 SCC 384] 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."



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9. Thus, as per the law laid down by this Court in the aforesaid decisions, *compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and 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 such family a post much less a post held by the deceased.*

9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

9.2 Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.”

Thus, it is vivid from the above judgment that compassionate appointment can only be granted, when the deceased employee dies in harness, leaving his family in penury and without any means of livelihood; that, such appointment is based



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on humanitarian grounds and aims to help the family overcome a sudden crisis, and that, the object of granting compassionate employment is not to give such family a post must less a post held by the deceased. Applying the said principle to the facts of the present case, wherein, the family of the appellant is not in indigent situation and hence, the appellant does not satisfy the eligibility criteria stipulated in the Government Order in vogue, for considering him for grant of compassionate appointment at this length of time.

8. Though the learned counsel for the appellant made a plea that the earlier two writ petitions praying for appropriate direction to the respondent authorities to consider his claim of compassionate appointment, were decided in favour of the appellant, the order of the learned Judge which is impugned in this appeal, overlooking the previous orders, amounts to violation of the doctrine of *stare decisis*, the same cannot be countenanced by this court in view of the fact that pursuant to the order dated 17.10.2012 passed in the second writ petition no.3056 of 2011, the second respondent after detailed analysis of the facts and circumstances of the case in the light of the documents / materials produced, rejected the claim of the appellant on the ground that the family of the appellant is not in indigent circumstances and the said ground is also validly established through the recent income certificate issued by the competent authority. Further, the decisions relied on by the learned counsel for the appellant, cannot be



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applicable to the facts of the present case, as they are factually distinguishable.

Thus, this court finds no reason much less valid reason to interfere with the order of the learned Judge, dismissing the writ petition, thereby rejecting the claim of the appellant.

9. In fine, the writ appeal fails and is accordingly, dismissed. No costs.

[R.M.D,J.] [M.S.Q, J.]
01.08.2023

r n s

Speaking Order /Non-speaking order

Internet : Yes.

Index : Yes / No

To

1.The Director of School Education,
College Road,
Chennai - 600 006.

2.The District Education Officer,
Villupuram District,
Villupuram - 605 102.



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