



W.A.No.2242 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.3.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.No.2242 of 2019

C.Sham Kamalesh

... Appellant/Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary,
Education Department,
Fort St.George, Chennai 600009.
2. The Director of School Education,
College Road, Chennai 600 006.
3. The Joint Director of School Education
(Personnel), College Road,
Chennai 600 006.
4. The District Educational Officer,
Gopichettipalayam, Erode District. ... Respondents/Respondents

Writ Appeal filed under Section 15 of Letters Patent to set aside the order passed in W.P.No.32165 of 2014 dated 6.07.2018 on the file of this Court.

For Appellant : Mr.Balavijayan for
M/s.C.S.Associates
For Respondents : Mr.U.Baranidharan, A.G.P.



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JUDGMENT

D.KRISHNAKUMAR, J.

Writ petition has been filed seeking suitable appointment in any of the Government department on compassionate ground on account of death of the appellant's father viz., P.Chinnasamy, who was working as Headmaster in Panchayat Union Middle School, P.Kaattupalayam, Nambiyur Panchayat Union, Gopi Taluk, Erode district, died on 23.9.2002 while he was in service.

2. The grievance of the appellant/petitioner is that his father died while he was in service, leaving behind him, widowed wife and two sons. The petitioner is one of the sons. Pursuant to the death of his father, the petitioner has submitted an application for compassionate appointment to the post of Junior Assistant on 18.11.2003. The said application was not considered by the respondents. Therefore, the petitioner has approached this Court by filing W.P.No.5839 of 2014 and the same was disposed of by this Court on 15.9.2014, with a direction to consider the application of the petitioner for compassionate appointment. However, the fourth respondent rejected the claim of the appellant/petitioner by order dated 3.11.2014 on the ground that the family was in receipt of income by way of pension and was in possession of immovable asset and the petitioner's brother had also completed graduation in



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Engineering. It is also stated in the impugned order that the widowed wife of the deceased was also working as a Teacher in private educational Institution. The said rejection order is under challenge in the instant writ petition. The Writ Court rejected the claim of the appellant and therefore, the present appeal.

3. According to the appellant, the employment of his mother is not true and the learned Judge has failed to consider the fact that the petitioner's mother is getting family pension of Rs.2,500/- only after deduction and they also borrowed loan for education of the second son from the bank and the immovable property has been mortgaged for borrowing the said loan from the bank. All these aspects were not taken into consideration by the respondent department.

4. The learned Additional Government Pleader appearing for the respondents has strongly objected by stating that the petitioner's family is not facing any financial crisis and the appellant also not satisfied the norms prescribed in the Government orders.

5. We have heard the learned Counsel appearing for the appellant and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.



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6. The report of the Tahsildar disclosed the fact that the wife of the deceased employee is working as a Teacher in a private educational Institution and also, she is getting Rs.1,29,048/- p.a. as family pension. Further, the wife of the deceased is having house property worth Rs.6,50,000/- According to the petitioner, the petitioner was aged 18 years at the time of death of his father, now aged 38 years, has survived all these years without any income. According to the respondents, at the time of death of the deceased employee, as per the existing rules for appointment on compassionate grounds, the wife of the deceased employee is eligible for getting suitable job in the School Education department soon after the death of her husband, if she had applied properly within three years from the date of death of her husband. Admittedly, she was already employed as a Teacher in a Private Educational Institution.

7. The Honourable Supreme Court as well as this Court in a catena of decisions have repeatedly held that compassionate appointment cannot be made contrary to the relevant Rules. That apart, the object of the compassionate appointment is to enable the family of the deceased Government employee to tide over the immediate financial crisis caused as a result of the untimely death of the employee and it is not a matter of right.



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8. In **Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC**

138], the Honourable Supreme Court has held as follows:

“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.”

9. In **Bhawani Prasad Sankar vs. Union of India and Others**

[2011 (3) LLN 37 (SC)], the Honourable Supreme Court has held as follows:

“(i) Compassionate employment cannot be made in the absence of Rules or Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the Scheme.

(ii) ...

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of



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the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be."

10. In State of Himachal Pradesh and another vs. Parkash Chand

[(2019) 4 SCC 285], the Honourable Supreme Court has held as follows:

"8.The High Court while deciding issue (ix) has relied upon the decision of this Court in Govind Prakash Verma v. LIC [(2005) 10 SCC 289] more specifically on the observation that the mere fact that the elder brother of the applicant was engaged in agricultural work and was also doing the work of a casual painter, would not be construed as gainful employment. This finding in Govind Prakash Verma [(2005) 10 SCC 289] is purely on the facts of that case and cannot be construed to be of any relevance to the present case.

9. The High Court has observed that the State should consider cases for appointment on compassionate basis by dealing with the applications submitted by sons, or as the case may be, daughters of deceased government employees, even though, one member of the family is engaged in the service of the government or an autonomous board or corporation. This direction of the judgment of the High Court virtually amounts to a mandamus to the State Government to disregard the terms which have been stipulated in paragraph 5(c) of its Policy dated 18-1-1990.



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The policy contains a limited exception which is available only to a widow of a deceased employee who seeks compassionate appointment even though one of the children of the deceased employee is gainfully employed with the State. The basis for this exception is to deal with cases where the widow is not being supported financially by her children.

10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to re-write the terms of the policy. It is well-settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. [Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138], SBI v. Kunti Tiwary [(2004) 7 SCC 271, Punjab National Bank v. Ashwini Kumar Teneja [(2004) 7 SCC 265], SBI v. Somvir Singh [(2007) 4 SCC 778, Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384], Union of India v. Shashank Goswami [(2012) 11 SCC 307, SBI v. Surya Narain Tripathi [(2014) 15 SCC 739 and Canara Bank v. M.Mahesh Kumar [(2015) 7 SCC 412].

11. For the above reasons, we are of the view that the judgment of the High Court is unsustainable. The High Court has virtually rewritten the terms of the Policy and has issued a direction to the State to consider applications which do not fulfill the terms of the policy. This is impermissible.”



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11. In **Government of India and another v. P.Venkatesh [(2019)**

15 SCC 613], the Honourable Supreme Court has held as follows:

“8. This ‘dispose of the representation’ mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9-8- 2016, nearly twenty one years had elapsed since the date of the death of the employee.

9. ...

10. Bearing in mind the above principles, this Court held: (Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138) SCC pp.141-42, para 6)

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot



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*be claimed and offered whatever the lapse of time
and after the crisis is over.”*

12. In the light of the ratio laid down by the Hon'ble Supreme Court in the decisions cited supra and considering the facts of the case, this Court is of the view that there is no patent error or infirmity to interfere with the order passed by the Writ Court dated 6.07.2018 in W.P.No.32165 of 2014.

Accordingly, the Writ appeal stands dismissed. No cost.

(D.K.K.J.) (K.G.T.J.)
10.3.2023

Speaking/Non Speaking order

Index: Yes

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To

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