



W.A.(MD).No.123 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.11.2023

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**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).No.123 of 2021
and
C.M.P.(MD).No.303 of 2021

The Manager,
Life Insurance Corporation of India,
Divisional Office,
9A, Punitha Vathyar Street,
Palayamkottai,
Tirunelveli – 627 002.

.. Appellant/Respondent

Vs.

P.Balasubramanian

..Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 26.11.2020 in W.P.(MD).No.12143 of 2015.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondent : Mr.R.Karunanidhi



W.A.(MD).No.123 of 2021

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)

The present Writ Appeal has been instituted by Life Insurance Corporation of India, the appellant herein, challenging the order dated 26.11.2020 passed in W.P.(MD).No.12143 of 2015.

2. The order impugned came to be challenged mainly on the ground that the writ petitioner/respondent is not falling within the scope of the scheme of compassionate appointment in force in the appellant Corporation. The father of the writ petitioner was employed as Record Clerk in the appellant Corporation and died in harness on 16.03.2013. The mother of the writ petitioner submitted an application seeking appointment to the writ petitioner on compassionate grounds. The said application was rejected mainly on the ground that the elder brother of the writ petitioner is gainfully employed as a regular employee and therefore, the legal heirs of the deceased employee are not eligible to seek appointment on compassionate grounds.



W.A.(MD).No.123 of 2021

WEB COPY

3. The learned counsel for the appellant mainly contended that the judgment of the Apex Court relied on by the learned Single Judge is distinguishable with reference to the facts and therefore, the order impugned is to be set aside. It is contended that the appellant secured documents to establish that the elder brother of the writ petitioner is gainfully employed for a private sector and his pay slip has been enclosed along with the typed set of papers. More so, the contention of the writ petitioner that his elder brother is not maintaining the family is unacceptable, since the management is bound by its scheme in force during the relevant point of time.

4. The learned counsel appearing on behalf of the respondent objected the said contention by stating that the family was in penurious circumstances on account of the sudden death of the father of the writ petitioner. The elder brother of the writ petitioner was not maintaining the family and the said fact was not considered by the authorities. Thus, the learned Single Judge has granted the relief and there is no infirmity. Therefore, the Writ Appeal is to be rejected.



5. Considering the arguments as advanced by the respective learned counsels appearing on behalf of the parties to the appeal on hand, the governing principles to be adopted for providing appointment on compassionate grounds are that the scheme is a concession and not an absolute right. Conditions stipulated are to be scrupulously followed. Extension of the scheme by exercise of the powers of judicial review would result in an anomalous situation, where the appointment under the constitutional scheme would be tilted. Thus, Courts are expected to exercise restraint in granting orders of appointment on compassionate grounds contrary to the terms and conditions stipulated under the scheme.

6. Equal opportunity in public employment is the constitutional mandate. The scheme itself is violative of Article 14 and 16 of the Constitution. In the event of large scale employments on compassionate grounds, the equality class enunciated under the Constitution would be offended and more so, there is a possibility of inefficient public administration, since compassionate appointments are made without any merit assessment or competitive process. Even the rule of reservation has not been followed. Therefore, large scale appointment would directly



W.A.(MD).No.123 of 2021

offend the rule of reservation depriving the opportunity of reserved candidates for appointment through open competitive process. Thus, the consequences of compassionate appointment are also to be taken note of while granting the relief of appointment on compassionate grounds.

7. We are not opposing the scheme of compassionate appointment nor discouraging the same. The consequences of large scale compassionate appointments in violation of the scheme is to be taken into consideration while granting the relief in a writ proceedings. Thus, the scheme is to be implemented strictly by following the terms and conditions and to the genuine families, who are in penurious circumstances at the time of the death of an employee. This exactly is the reason why the employers impose several conditions to ascertain the indigent circumstances of the family of the deceased employee so as to extend the benefit of the scheme of compassionate appointment.

8. In the present case, the father of the writ petitioner died on 16.03.2013 and ten years have lapsed. Thus, a factual inference is to be drawn that the penurious circumstances prevailed during the relevant point



W.A.(MD).No.123 of 2021

of time became vanished. Hence, this Court is not inclined to consider the relief sought for by the respondent/writ petitioner in the writ proceedings.

We find that the reason in the order impugned is running counter to the principles laid down by the Apex Court in recent judgments in the matter of compassionate appointments. The income of the family, penurious circumstances and other criterias fixed under the scheme are to be taken into consideration for granting appointment on compassionate grounds. Thus, we are not in agreement with the view taken by the learned Single Judge.

9. Accordingly, the order dated 26.11.2020 passed in W.P.(MD). No.12143 of 2015 is set aside and the Writ Appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
16.11.2023

NCC : Yes / No
Index : Yes / No
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WEB COPY



W.A.(MD).No.123 of 2021

S.M.SUBRAMANIAM,J.
and
V.LAKSHMINARAYANAN,J.

Lm

W.A.(MD).No.123 of 2021

16.11.2023