



W.A.(MD) No.1280 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 16.11.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD) No.1280 of 2019
and C.M.P.(MD) Nos.7589 of 2019 and 9881 of 2021

- 1.The District Collector,
Madurai District,
Madurai – 20.
- 2.The Assistant Director of Town Panchayats,
Madurai Zone,
Madurai – 20.
- 3.The Executive Officer,
Peraiyur Town Panchayat,
Madurai.
- 4.The Director of Town Panchayat,
Kuralagam,
Chennai – 600 108.
- 5.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
- 6.The Secretary,
Tamil Nadu Municipal Administration
and Water Supply Department,
Fort St.George,
Chennai – 9.

... Appellants/Respondents



W.A.(MD) No.1280 of 2019

-Vs.-

A.Karthikeyan

... Respondent/Writ Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 13.12.2018 made in W.P.(MD)No.4655 of 2013 on the file of this Court.

For Appellants : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by Mr.S.P.Maharajan
Special Government Pleader
for Appellants 1 to 4 & 6
Mr.J.Anandkumar
Standing Counsel for 5th
Appellant

For Respondent : Mr.M.V.Venkataseshan

J U D G M E N T

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

The Writ Appeal on hand has been instituted against the order dated 12.12.2018, passed in W.P.(MD) No.4655 of 2013.

2. The order of rejection rejecting the claim of the respondent to appoint him to the post of Junior Assistant on compassionate ground was under challenge in the writ proceedings. Since the rejection order



W.A.(MD) No.1280 of 2019

was quashed by the learned Single Judge, the State has chosen to file the present Writ Appeal.

3. Learned Additional Advocate General appearing on behalf of the appellants mainly contended that the respondent was appointed on compassionate ground on 21.08.2007 in the post of Record Clerk and he joined the said post. His probation was declared and after the lapse of five years he has filed another application to seek appointment to the post of Junior Assistant on compassionate grounds. The said claim was rejected by the authorities and the said order was under challenge in the writ proceedings. Learned Single Judge without considering the fact that the respondent was already appointed on compassionate grounds in the post of Record Clerk, granted the relief in favour of the respondent by relying upon the Government Order issued in G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989. In the said order the Government has issued certain guidelines stating that when the post of Junior Assistant is available and the applicant seeking appointment on compassionate ground is eligible for appointment to the post of Junior Assistant, then he need not be appointed to a lower post. Relying on the said Government Order the relief was granted.



W.A.(MD) No.1280 of 2019

4. Learned Additional Advocate General relied on two judgments of the Division Bench of this Court. One ***dated 10.06.2019 made in W.A. No.1767 of 2019***, in the matter of ***Bharathiraja v. The Government of Tamil Nadu, represented by its Secretary to Government***, wherein the following observations are made:-

“5. There is absolutely no basis in the claim made by the appellant. There is no vested right to the appellant to claim employment in a post of his choice. The Scheme framed by the Government indicates the posts reserved for compassionate appointment. The Government has been making appointments only to the lower level posts. The fact that the appellant is over qualified would not give him a right to claim a superior post. The compassionate appointment given to the appellant itself was a concession. The learned single Judge considered all these vital aspects and the writ petition was rightly dismissed.”

5. In another judgment ***dated 01.03.2019, made in W.A.No.658 of 2019***, in the matter of ***M.Prathap v. The Principal Secretary, Revenue Administrative Commissioner***, the Court considered the principles as follows:-

“6. ... On a conspectus of the dictum laid down in the binding decisions extracted supra, it would necessarily follow



WEB COPY

that the Appellant, who had already been appointed as Officer Assistant on compassionate grounds cannot make another claim to be posted as Junior Assistant or Record Clerk. We are in agreement with the reasons assigned by the Learned Judge in the order under appeal explaining that the claim made by the Appellant, which runs contrary to the object of appointment on compassionate grounds, cannot be granted and we confirm the same.

7. It is a settled legal proposition that Article 14 of the Constitution cannot be meant to perpetuate illegality as it does not envisage negative equality. Thus, if some benefit has been granted inadvertently by mistake to a person, such order does not confer any legal right on similarly placed persons to be extended the same benefit. Restating the applicability of that legal principle to appointments made on compassionate grounds, the Hon'ble Supreme Court of India in ***Union Bank of India -vs- M.T. Latheesh [(2006) 7 SCC 350]*** has cautioned that indiscriminate grant of appointments on compassionate grounds would shut the door for employment to the ever-growing population of unemployed youth.”

6. Learned counsel appearing on behalf of the respondent mainly contended that the Government guidelines issued is binding on the authorities. The petitioner was initially appointed as Record Clerk on



W.A.(MD) No.1280 of 2019

compassionate ground mistakenly and therefore, he is entitled to be appointed as Junior Assistant and the said claim was rejected. Learned Single Judge rightly considered the claim of the respondent based on the Government guidelines issued and therefore, the Writ Appeal is to be rejected.

7. In support of the said contentions, the learned counsel for the respondent relied on the order of the learned Single Judge *dated 15.06.2011*, passed in *W.P.No.19932 of 2008*, in the matter of *P.G.Ramesh v. The Government of Tamil Nadu Rep. by its Secretary to Government, Municipal Administration & Water Supply, Department, Chennai and others* wherein the relief of appointment to the post of Junior Assistant was granted. The said order was confirmed by the Division Bench and the Special Leave Petition filed by the State also was rejected.

8. We have considered the rival submissions made on behalf of the parties to the lis on hand.



9. The Scheme of compassionate appointment is a concession and not an absolute right. Scheme is not a method of appointment. All the appointments are to be made under the constitutional Scheme and equal opportunity in public appointment is the constitutional mandate. Under the Scheme of compassionate appointment, there is no merit assessment and the eligibility and suitability are not considered by the authorities. Mere death of an employee was taken into consideration for extending the benefit of the Scheme of appointment with an object to mitigate the circumstances arising on account of sudden death of an employee, who may be the breadwinner of the family. That being the object, the penurious circumstances prevailing on account of the death of the employee is to be considered by the authorities and other conditions stipulated are also to be complied with.

10. Scheme being a special one, to be implemented scrupulously following the terms and conditions. Large scale compassionate appointments, if made would cause infringement of the rights of lakhs of youths, who all are longing to secure public employment through open competitive process. Therefore, the Government earmarked limited number of posts for providing



W.A.(MD) No.1280 of 2019

compassionate appointment. List of seniority is maintained for the purpose of providing appointment on compassionate grounds. Scope of judicial review to grant the relief of compassionate appointment is limited and that being principles we are of the considered opinion that the first respondent is not entitled to seek second appointment on compassionate ground. He was already appointed on compassionate ground to the post of the Record Clerk based on his application and he has accepted the said post and is serving for more than 15 years. Therefore, the second application submitted by the respondent seeking appointment to the post of Junior Assistant on compassionate ground is not maintainable under the Scheme and therefore, the learned Single Judge has erred in granting the relief.

11. Consequently, the order impugned dated 12.12.2018, passed in W.P.(MD) No.4655 of 2013 is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

[S.M.S.J.] & [V.L.N.J.]
16.11.2023

NCC :Yes/No
Index :Yes/No
SJ



W.A.(MD) No.1280 of 2019

To

WEB COPY

- 1.The District Collector,
Madurai District,
Madurai – 20.
- 2.The Assistant Director of Town Panchayats,
Madurai Zone,
Madurai – 20.
- 3.The Executive Officer,
Peraiyur Town Panchayat,
Madurai.
- 4.The Director of Town Panchayat,
Kuralagam,
Chennai – 600 108.
- 5.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
- 6.The Secretary,
Tamil Nadu Municipal Administration
and Water Supply Department,
Fort St.George,
Chennai – 9.



WEB COPY



W.A.(MD) No.1280 of 2019

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

SJ

W.A.(MD) No.1280 of 2019

16.11.2023