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W.P.No.11057 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.11057 of 2023

V.Kumaresan

... Petitioner

Vs.

1.The Registrar General,
Madras High Court,
Chennai – 600 104.

2.The Deputy Registrar (Admin-I)
Madras High Court,
Chennai – 600 014.

3.K.Meenakshi

4.The Secretary,
Home Department,
Fort St.George,
Government of Tamil Nadu,
Chennai – 9.

5.The Secretary,
Labour and Employment Department,
Fort St.George,
Government of Tamil Nadu,
Chennai – 9.

... Respondents

(R-4, R-5 *suo motu* impleaded *vide* order dated 13.09.2023
made in W.P.No.11057 of 2023 by SVNJ, KRSJ)



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India in the nature of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings in Roc.No.51188/2020-Estt.I. Dated 03.01.2023 and to quash the same and consequently direct the 1st and 2nd respondents to provide employment to the petitioner on compassionate grounds.

For Petitioner : Mr.J.Prakasam
For R1 & R2 : Mr.M.Kemprij
For R3 : Mr.M.Balasubramanian

ORDER

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

The communication dated 03.01.2023 issued by the Deputy Registrar (Admin.I), High Court of Madras to the writ petitioner stating that the application of the petitioner seeking compassionate appointment will be proceeded on submission of 'No Objection Certificate' from the other legal heirs is under challenge in the present writ proceedings.

2. Such communication issued during the scrutiny of the



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applications would not provide a cause for filing a writ petition. However, the Registrar General, High Court of Madras in R.O.C.No.51188/2020-ESTT.I.

Dated 07.12.2023, rejected the application submitted by the petitioner for providing compassionate appointment.

3. Mr.J.Prakasam, learned Counsel for the petitioner would submit that the mother of the writ petitioner was an employee in the Judiciary and died on 01.07.2020, while she was in service. At the time of the death of the employee, the petitioner was aged about 37 years and married and got two children. The petitioner submitted an application seeking appointment on compassionate grounds. The respondents asked the petitioner to submit 'No Objection Certificate' from other legal heirs. The petitioner has immediately filed the writ petition, challenging the said communication. During the pendency of the Writ Petition, the application was rejected by the Registrar General, High Court of Madras.

4. Scheme of compassionate appointment is violative of Article 14



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and 16 of the Constitution of India. Compassionate appointment is not a regular stream of appointment. It is an exception and therefore, the scheme is to be implemented by scrupulously following the terms and conditions stipulated. Compassionate appointments are provided to mitigate the circumstances arising on account of sudden death of an employee, while in service. Therefore, the penurious circumstances of the family and other criteria fixed are to be considered before granting appointment on compassionate grounds.

5. Lakh and lakh of youth of our great nation are burning their mid night lamp and working hard to secure public employment through open competitive process. However, compassionate appointments are made without any merit assessment and no Rule of reservations are followed. The death of an employee is alone is fixed as criteria for appointing the legal heir of the deceased employee on compassionate grounds. Therefore, large number of compassionate appointments in public administration would result in administrative inefficiency. Efficient public administration is the Constitutional mandate. Therefore, the appointment on compassionate grounds are to be restricted, so as to ensure that the benefit is extended to the



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genuine cases. Verification of the indigent circumstances and other factors are to be done, by conducting enquiry.

6. In the present case, even at the time of the death of the employee, the petitioner was a married person having two children and was aged about 37 years. The petitioner was married and maintaining his wife and children before the death of his mother. Therefore, it cannot be construed that the deceased employee from and out her income maintained the family of the petitioner. The petitioner might be an earning member during the relevant point of time. That being so, the scheme if extended would result in denial of equal opportunity to all other eligible persons aspiring to secure public employment.

7. Equal opportunity in public employment is the Constitutional mandate. Rule of reservation is the mandate. Therefore, special scheme appointments made in violation of the Constitutional scheme of appointments would infringe the rights of the citizens, who all are aspiring to secure public employment through open competitive process.

8. The order of rejection passed by the Registrar General, High



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Court of Madras *vide* proceedings dated 07.12.2023 reveals that the maximum age fixed for compassionate appointment to the male and female legal heir of the deceased employee is 35 years, as per Section 15 of Tamil Nadu Government Servants (Conditions of services) Act, 2016.

9. Learned Counsel for the petitioner would submit that as per the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023 the maximum age limit is 40 years.

10. Tamil Nadu Government Servants (Conditions of Services) Act, 2016 was enacted by the Legislative Assembly of State of Tamil Nadu in the 67th year of Republic of India. Therefore, the Rules framed under Article 309 of Constitution of India cannot super cede the enactment made by the Legislative Assembly of State of Tamil Nadu. Section 15 of the Act reads as under:

“15.Age concession for appointment on compassionate grounds:

Nowithstanding anything contained in the Special Rules for various State and Subordinate Services regarding the maximum age limit for appointment by direct



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recruitment, in the case of appointment on compassionate grounds, the maximum age limit shall be thirty five years of age in respect of the sons or the unmarried daughters and fifty years of age in respect of wife or husband of the Government servant, who died in harnesss while in service, or retired from service on medical invalidation before attaining the age of fifty three years, as the case may be.

Explanation I. For the purpose of considering the maximum age limit, the date of death of the Government servant or the date of retirement on medical invalidation before he attains the age of fifty three years, as the case may be, shall be taken into account.

Explanation.II The expression 'sons and daughters' in this Section shall includes a widowed daughter, or a married daughter deserted by her husband and living with the familyof the deceased Government Servant, a legally adopted son or a legally adopted daughter, whose adoption was made during the life time of the deceased Government servant:

Provided that in respect of legally adopted son, it shall be with effect on and from the 11the March 1982; in respect of legally adopted unmarried daughter, it shall be with effect on and from the 26th October 1983; in respect of a daughter or a divorced daughter, it shall be with effect on and from the 17th June 1991; and in respect of a married daughter deserted by her husband and living with the family of the



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deceased Government servant, it shall be with effect on and from 6th July 1993:

Provided further that the widowed daughter or divorced daughter or a married daughter deserted by her husband and living with the family of the deceased Government servant shall not be eligible to avail the concession of appointment on compassionate grounds, unless they are nominated in writing by the widow or widower of the deceased Government servant.”

11. Therefore, the Registrar General has rightly adopted the provisions of the Act for considering the application submitted by the petitioner for compassionate appointment. Rules framed under Article 309 by the Government is running counter to Section 15 of the Act. Therefore, the Act will prevail over the Rules framed, since Section 15 of the Act specifically deals with age concession for appointment on compassionate grounds.

12. The contention of the petitioner is that Section 68 of the Act will protect the maximum age limit fixed under the Rules is unacceptable. Section 68 can be applied only if Special Rules are framed. Section 16 enumerates overriding effect of Special Rules. If any provisions of the Act is inconsistent



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with any Special Rules applicable to particular service, the Special Rules shall in respect of that service will prevail over the provisions of the Act.

13. However, in the present case, the age concession is concerned, the Act itself contemplates age concession to be granted for compassionate appointments. Therefore, the Rules framed fixing different age is to be construed as contrary to Section 15 of the Act and thus, Section 68 of the Act has no application, as far as the age concession granted for compassionate appointments under Section 15 of the Act.

14. Various criterias are to be considered for grant of compassionate appointments. Merely on the ground of age alone the compassionate appointments cannot be considered. Other mitigating factors indigent circumstances of the family necessity to provide appointment on compassionate grounds are to be scrupulously considered by the Appointing Authorities. In the present case, the petitioner has not satisfied the requisite conditions. Therefore, we are not inclined to consider the relief.

15. Accordingly, the Writ Petition stands dismissed. No order as to



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costs.

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[S.M.S.J.] [K.R.S.J.]
15.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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