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W.A.No.2571 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.2571 of 2021
and
C.M.P.No.16770 of 2021

1.The Government of Tamil Nadu,
Rep. by the Deputy Secretary to Government,
Department of National Highways,
Fort St. George, Chennai – 9.

2.The Chief Engineer,
National Highways and
Rural Development Department,
Chennai – 5.

3.The Divisional Engineer,
Office of the National Highways,
Cuddalore.

4.The Assistant Executive Engineer,
Rural Development and
National Highways Department,
Cidambaram.

... Appellants

Vs.

Amudha Valli

... Respondent



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 24.08.2021 made in W.P.No.6010 of 2009 and allow this writ appeal.

For Appellants : Mr.S.John J.Rajsasingh
Additional Government Pleader

For Respondent : Mr.N.A.Nissar Ahmed
Senior Counsel
For Mrs.I.Kowser Nissar

J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The scheme of compassionate appointment is an exception. All appointments to the public posts are to be made only under the Constitutional schemes. Compassionate appointment is violative of Articles 14 and 16 of Constitution of India. The scheme was made by the Government in order to mitigate the circumstances arising on account of sudden death of Government employee. Therefore, the scheme must be implemented in its real spirit, so as to provide an employment only to the family in indigent circumstances on account of the death of the breadwinner in the family.



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2. Compassionate appointment is not a method of appointment.

Scheme being an exception cannot be implemented after lapse of many years.

Long delay is a ground to reject the application, since the penurious circumstances aroused on account of the death of an employee would have become vanished. Thus, delay is also to be considered as a ground to reject the application to provide appoint on compassionate ground.

3. Providing efficient public administration is the Constitutional mandate. Therefore, compromising the efficiency in public appointments is an unconstitutionality. This exactly is the reason why illegal, irregular, back door appointments are consistently discouraged by the Constitutional Courts across the country. Only if meritorious candidates through open competitive process is appointed, then alone the Government will be in a position to provide efficient public administration.



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4. In compassionate appointment there is no assessment of merit. Not even the suitability is assessed. Rule of Reservation is not followed. Mere death alone is the ground to provide public appointment. Therefore, large number of appointments on compassionate ground would infringe the right of the eligible meritorious candidates, who all are aspiring to secure public appointments through open competitive process. Therefore, the Government has provided limited number of vacancies for compassionate appointments. Large number of compassionate appointments may result in inefficient public administration.

5. In the present case, admittedly, the father of the 1st respondent Late Mr.Narayanaswamy was an employee in the Government Department and died on 26.06.2000. Immediately the mother of the 1st respondent submitted an application, which was not considered on account of ban imposed by the Government for appointments with effect from 29.11.2001. The ban order was in force for about five years and thereafter lifted in the year 2006. The mother of the 1st respondent died on 25.03.2006. Thereafter, the elder sister of the 1st respondent filed an application seeking appointment on compassionate grounds.



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6. Mr.N.A.Nissar Ahmed, learned Senior Counsel appearing on behalf of the respondent would submit that the elder sister of the 1st respondent got married and settled. Thereafter, the petitioner submitted an application seeking appointment on compassionate grounds.

7. In order to support the contention, the learned Senior Counsel would rely on the terms stipulated in the scheme, wherein, an alternate application is entertainable. The scheme conditions stipulates that “If the applicant (legal heir of deceased Government Servant) died after applying for compassionate ground appointment, an alternative application may be accepted from the another legal heir of the deceased Government servant, subject to the conditions prescribed for compassionate ground appointment”.

8. We found that the said clause is not applicable to the facts of the present case. In the present case, the father of the 1st respondent died on 26.06.2000 and the wife of the deceased employee submitted an application. She died on 25.03.2006. Thereafter, one application from the legal heirs alone is entertainable under the said clause for alternative application. However, the elder sister of the 1st respondent filed an application and she has



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not pressed the same, since she got married and settled. Thereafter, no application is entertainable from any other legal heirs of the deceased employee. Thus, the very application submitted by the 1st respondent is not entertainable and rightly rejected by the appellants.

9. Scope of the scheme, if expanded, would result in affecting the rights of the eligible candidates aspiring to secure public employment. Courts cannot expand such special scheme of appointments on misplaced sympathy. The fact remains that the employee died in the year 2000 and 24 years lapsed, mean while, the elder sister of the 1st respondent got married and settled. That being the development in the family, this Court is unable to form an opinion that the family is continuing in penurious circumstance.

10. In view of the facts and circumstances, we found that the writ order is not in consonance with the purpose and object to be achieved under the scheme of compassionate appointment.



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11. Thus, we are inclined to interfere and the order dated 24.08.2021 passed in W.P.No.6010 of 2009 is set aside and Writ Appeal stands allowed.

Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]
24.06.2024

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Index : Yes
Speaking order
Neutral Citation : Yes



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