



WEB COPY



WP.No.24758 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.01.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.24758 of 2021

and

WMP.No.26037 of 2021

S.ABHISHEK

...

Petitioner

Vs.

The Director, NIFT
(National Institute of Fashion Technology)
Chennai Campus,
Tharamani, Chennai-600 113

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent to consider the request for compassionate appointment based on petitioners representation dated 27.10.2020 and followed by subsequent submission dated 21.08.2021 at the earliest to appoint any suitable post.

For Petitioner : Mrs.Pavithrasini

For Respondent : Mr.Balan haridas



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ORDER

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This Writ Petition has been filed seeking direction against the Respondent to consider the request for compassionate appointment based on the petitioner's representation dated 27.10.2020 and followed by a subsequent submission dated 21.08.2021 at the earliest to appoint any suitable post.

2. The petitioner's mother was working as a professor at the respondent National Institute of Fashion Technology, Chennai campus, and died on 16.8.2020 while she was in service. The petitioner is one of the sons of deceased Dr. B.N. Malar Selvi and they had applied to appoint him on compassionate grounds. He is qualified in B.E. Civil Engineering and M.Tech. Civil Structural Engineering. He was temporarily working for a construction company for two years. The petitioner has sent a representation dated 27.10.2020 and no orders have been passed so far on the same. Hence the petition.

3. Heard, Mrs.Pavithrasini, learned counsel for the petitioner and Mr.Balan Haridas, learned counsel for the respondent and perused the materials available on records.



4.Mr.Balan Haridas, learned counsel for the respondent submitted that as per the scheme for compassionate appointments, appointments can be made only to Group-C posts by considering the indigent family situation of the deceased. Those appointments can be made only when regular vacancies are available. When there is already an earning member in the family, the dependent family members can apply for the death benefits of the deceased Dr. B.N. Malar Selvi, to be paid to her legal heirs. All the sons of the deceased are well educated and they are well off and hence the petitioner is not eligible for any compassionate appointment; since the retirement benefits of the deceased were sufficient to meet out the needs of the family, the petitioner does not deserve a compassionate appointment; the petitioner has a higher qualification than the qualification required for Group C posts; the family has received a sum of Rs.31,09,590/- towards the terminal benefits of the late Dr.B.N.Malar Selvi and she has also assets worth of Rs.1.30 Crores. The petitioner's representation was duly considered and rejected on 5.4.21. The petitioner has not filed an appropriate application seeking compassionate appointment by disclosing all the relevant details and hence his appointment cannot be considered for the compassionate appointment scheme.



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5. Mrs.Pavithrasini, learned Counsel for the petitioner submitted that there are three children for the deceased Dr.B.N.Malar Selvi and they are dependent upon the salary of the deceased and hence the respondent has not considered the relevant aspects for a compassionate appointment and simply rejected the compassionate appointment request made by the petitioner. Though the petitioner's mother died on 16.8.2020; the petitioner has given a representation on 23.10.2023 itself. The respondent who had been communicating with the petitioner have been informing him all along that there is no compassionate appointment for Group 'A' and 'B' posts and only Group 'C' posts alone to be considered for compassionate appointment and based on the qualifications and suitable vacancies, this petition will be considered.

6. But now it is known that the respondent has rejected the request of the petitioner for a compassionate appointment, but a copy of the order has not yet been served on the petitioner. However, from the submission made by the learned counsel for the respondent, the respondent was not convinced to give a compassionate appointment to the petitioner because the terminal benefits accruing to Rs.31 lakhs were settled with to legal heirs.



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7. It is further submitted that the petitioner and his brothers are all well educated and have high qualifications. Even though the petitioner has completed B.E. Civil Engineering and M.Tech. Civil Structural Engineering, the petitioner's father has applied for the family pension and that is said to be under consideration and he is also said to be an earning member. The petitioner himself has involved in construction activities; However, it is submitted by the petitioner that due to covid pandemics, he stopped going for construction activities and became jobless, now.

Even though the petitioner is highly qualified, only if he accepts the job meant for the compassionate appointment scheme, he can be appointed.

8. Just because a lump sum is received by the legal heirs as the terminal benefit of the deceased employee, it cannot be said that the dependants of the deceased are rich enough to dispense the income earned by the deceased. And it did not have any impact on their condition of living. For basic servants, the salary earned would have been used for the basic requirements alone. In a fairly higher cadre of employment, the salary earned by the employee could have been appropriated towards fulfilling the basic needs of family members along with



some other commitments. Each one has commitment according to their earning ability and the living status in which they are settled.

9. The compassionate appointment is offered not only as a means to save the family of the deceased employee from penury, but also in recognition of his services rendered by him and by taking into account of the impact its created on his dependants due to his sudden demise. Since the petitioner's mother was working as a professor, she would have taken a fair amount as salary for her family. Her death is a sudden blow and the petitioners would have felt the bad impacts it had given on his life.

10. There is no doubt that the petitioner and his brother are well educated. But that alone cannot be a reason to note that they are well placed in life. In the present unemployment such issue, even for the basic-level posts, people who are hold double degrees, including those with professional degrees completed and get the job. Although the children of the deceased Dr.B.N.Malar Selvi are technically qualified by having completed engineering courses. It cannot be presumed that they are comfortable. It cannot be denied that the world is competitive and it is difficult for children to settle in life without the support of their parents.



WEB COPY **11.** The mother of the petitioner had died at a crucial stage when the petitioner was badly in need of her support, both physically and financially. A compassionate appointment has to be appreciated in a holistic manner and it cannot always be viewed as something related to just hand-to-mouth existence. When an employer frames a compassionate appointment scheme, they are aware of the fact that the death cum retirement benefits would be given to the dependants of the deceased, even when a compassionate appointment is offered. So the compassionate appointment cannot be considered as a substitute for the terminal benefits, but the scheme is an addition to the same.

12. It is not the contention of the respondent that the petitioner's father has been employed in the government sector. It is stated that the deceased petitioner had immovable property worth Rs. 1.30 crores. It would have obviously be the house in which the deceased had lived with her children or a site purchased by her for the sake of her family. With that alone it cannot be considered that the petitioners are affluent or wealthy and they are capable of living a life of luxury and hence become disqualified for a favourable consideration for compassionate



appointment.

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13. The deceased had three children and she would have invested her earning, in the maintenance and education of the three children and she could not have had any big bank balance so as to allow her children to sit ideally at home and enjoy life. The respondent did not consider the whole list of circumstances and the core object of providing compassionate appointment, before rejection. Hence, I feel the representation of the petitioner needs to be reconsidered by the respondent.

14. The respondent submitted that the petitioner did not submit necessary documents along with his representation. The petitioner has to ensure that he had submitted all the necessary documents for the consideration of the respondent. Hence, it is always open to the respondent to call for any other documents required for the sake of consideration. Hence, the petitioner shall produce the essential documents, as demanded by the respondent.

15. Since the representation for the compassionate appointment could have been appreciated in a broad and holistic, I wish the uncommunicated order dated



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05.04.2021 passed by the respondent should be kept in abeyance and the respondent shall reconsider the representations of the petitioner dated 27.10.2020 and 21.08.2021 afresh in the light of the above discussion and pass a fresh order.

16. With the above observation, this Writ Petition is **disposed**. The respondent is directed to reconsider the petitioner's representations dated 27.10.2020 and 21.08.2021 and pass an order afresh within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

29.01.2024

Index : Yes/No
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jrs



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R.N.MANJULA, J.

jrs

To

The Director, NIFT
(National Institute of Fashion Technology)
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Tharamani, Chennai-600 113.

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