

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.19561 OF 2000

and

W.M.P.NO.28378 OF 2000

R. Hari,

S/o. late Ramasubbu .. Petitioner

-Vs-

1. State of Tamil Nadu,
represented by its Secretary,
Department of Agriculture,
Fort St. George,
Chennai 600 009.

2. The Director of Agriculture,
Agricultural Department,
Chepauk, Chennai 600 005.

3. The Joint Director of Agriculture,
Agricultural Department,
Office of District Collectorate,
Dharmapuri-5. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.K. Ravianantha Padmanabhan

For Respondents : Mrs.N.G. Kalaiselvi
Special Govt. Pleader

:J U D G M E N T

The petitioner has prayed for quashing the order dated 28.3.2000 and
for a direction to the respondents to provide compassionate appointment to the
petitioner commensurate with his qualification.

2. The facts giving rise to the present writ petition are as
follows:-

The father of the petitioner was employed in the Department of

Agriculture. He had expired on 16.5.1984 in harness. The petitioner was aged about 5 years at that time. Subsequently the petitioner and his brother were brought up by their maternal grandmother with great financial hardship. After attaining majority, the petitioner applied to the second respondent on 21.9.1997 seeking appointment on compassionate ground. Ultimately such application was rejected under the impugned order on the ground that such application has been made after a lapse of 14 years from the date of death of the father.

3. A counter affidavit has been filed on behalf of the respondents. While not denying about the basic facts, it has been stated that the application had been filed after a lapse of 14 years and considering all the relevant circumstances, the proposal for relaxation has been rejected. The question of appointment on compassionate ground in respect of the dependants of the Government servant has been the subject matter of several Government Orders issued from time to time.

4. As per G.O.Ms.No.225 dated 15.2.1972, the proposal for appointment is to be made without reference to Employment Exchange, the person should possess prescribed qualification and concurrence of Labour Department should be obtained. In G.O.Ms.No.560 dated 3.8.1977 it was indicated that at the time of consideration of the case of the dependant for appointment, the deceased Government servant's presumptive date of superannuation should not have reached. In other words, if the Government servant would have survived and would have retired at the time of consideration of the application, the question of appointment on compassionate ground would not arise. It was further indicated that the appointing authorities should satisfy themselves regarding the indigent circumstances of the family of the deceased Government servant. In G.O.Ms.No.1579 dated 21.7.1981 it was laid down that the son or daughter of the deceased Government servant shall apply before they attaining the age of 30 years and the widow shall apply before she attains the age of 31 years and G.O.Ms.No.560 was partially modified. Subsequently, under G.O. Letter No.2563 dated 11.3.1982 it was clarified that the age limit of the widow was 40 years and the question of age should be considered in relation to the date of death of the Government servant. Thereafter under G.O.Ms.No.120 dated 26.6.1995, the Government issued modification to the effect that application for compassionate appointment should be made within a period of three years from the date of death of the Government servant and the maximum age limit in respect of widow was raised to 50 years. Subsequently, by letter No.39924 dated 11.10.1995, the Government issued a clarification to the effect that the limit of 3 years period as indicated in G.O.Ms.No.120 dated 26.6.1995 is applicable only to the dependants of the Government servants who died on or after 26.6.1995 and above G.Os are not applicable to the past cases. In the present case, the Government servant died prior to 26.6.1995 and the period of 3 years indicated in G.O.Ms.No.120 dated 26.6.1995 would not apply.

5. The question relating to compassionate appointment has been considered by the Supreme Court in several cases. In 1994(4) SCC 138 (UMESH KUMAR NAGPAL v. STATE OF HARYANA AND OTHERS), it was observed :
□ . . . Neither the Governments nor the public authorities are at

liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.[]

(Emphasis added)

6. In 1998(5) SCC 192 (DIRECTOR OF EDUCATION (SECONDARY) AND ANOTHER v. PUSHPENDRA KUMAR AND OTHERS), it was observed :

[] . . . In Umesh Kumar Nagpal v. State of Haryana this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased

and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.[]

7. In 1998(2) SCC 412 (STATE OF U.P. AND OTHERS v. PARAS NATH) it was observed :

[] . . . 5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one judgment of this Court in the case of Union of India v. Bhagwan Singh. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This Court observed:

□The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family.□

7. No such considerations would normally operate seventeen years after the death of the government servant. The High Court was, therefore, not right in granting any relief to the respondents.□

8. In the present case the application was filed after long lapse of time. It is true that such application could not have been filed earlier as the applicant himself was a minor. However, the intention of appointment on compassionate ground is to help the family tide over the immediate financial crisis occasioned due to loss of the bread winner. It cannot be the intention to secure a " hereditary right of succession"for the job after long gap. 9. In such view of the matter, I do not find any scope to interfere with the impugned order and the Writ Petition is dismissed. No costs. Consequently, WMP.No.28378 of 2000 is closed.

Index : Yes

Internet : Yes

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To

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