

W.P.No.19408 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.08.2023

Delivered on : 30.08.2023

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

And

THE HON'BLE MR. JUSTICE P.B.BALAJI

W.P.No.19408 of 2019

and M.P.No.18905 of 2019

1. A. Chinnaponnu,
2. A. Venkateswari.

.. Petitioners

vs.

1.Union of India,
Rep. By itsSecretary,
Government of India,
543, Rail Board, Raisina Road
New delhi – 110 001.

2.The General Manager,
Head Quarters, Southern Railway,
Park town, Chennai-600 003,



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3.Chief personal officer,
Head quarters,
Southern Railway, Park town
Chennai- 600 003.

4. The Senior Divisional personnel officer,
Madurai Division,
Southern Railways,
Madurai.

5. The Divisional personnel officer,
Madurai Division, Confidential section
Southern Railways,
Madurai

6.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai – 600 104

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in O.A. 310/1417/2017 of the 6rd respondent dated 21.02.2019 and quash the orders passed therein and consequently direct the respondents 1 to 5 to provide the employment to the 2nd petitioner on compassionate ground.

For Petitioner : Mr.R.Jayaprakash
For Respondents : Mr.P.T.Ram Kumar, Standing
Counsel – R1 to R5
R6 - Tribunal



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ORDER

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D.KRISHNAKUMAR,J.

The petitioner, challenging the impugned order dated 21.02.2019, in and by which her application seeking compassionate appointment was rejected by the sixth respondent, has filed the present writ petition.

2. Brief facts of the case is that the husband of the 1st petitioner who worked as a Gang mate in southern railway, who died in harness on 07.07.2010 leaving behind the 1st petitioner and his two daughters and one son. The 2nd petitioner herein is the daughter of the deceased employee. Since his brother gave consent to apply for a job compassionate appointment, she made request to the southern railway seeking compassionate appointment. The said request was rejected by the respondent department. Eventhough the the 2nd petitioner has preferred two original applications one after other and got favourable orders, the respondent department did not consider her request and rejected the same. Therefore, the 2nd petitioner has filed 3rd original application before the Central



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Administrative Tribunal in O.A.No. 1417 of 2017 and by order dated 17.11.2016, the Original Application was dismissed. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner has submitted that the second petitioner namely A.Venkateswari who is another daughter of the Late G.Adhimoolam has the eligibility criteria to seek for compassionate ground, with the consent of her sister and brother, she submitted an application with all mandatory documents to the authority seeking compassionate appointment on 07.03.2011. The said application was rejected by the 1st & 5th respondent without any valid reason.

4. The learned counsel for the petitioners has further submitted that challenging the said rejection order, the petitioners have filed applications in O.A No. 245 of 2013 and O.A.No. 905 of 2015 before the Central Administrative Tribunal one after other. The tribunal by orders dated 31.07.2014 & 27.07.2016 respectively disposed of the said original applications directing the respondents



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to reexamine the case and communicate to the petitioners. But the respondents without considering the directions issued by the tribunal, has communicated rejection order dated 08.05.2015 & 17.11.2016.

5. The learned counsel for the petitioner has further submitted that again the petitioners herein have preferred an original application in O.A.No.1417 of 2017 before the Central Administrative Tribunal. But the tribunal without considering the earlier directions issued by the very same tribunal, has rejected the petitioners' application by order dated 21.02.2019 stating that the 1st petitioner is in receipt of a decent family pension and there are no minor children to be looked after by her. It is further observed that as the 1st petitioner's husband died on 07.07.2010 and a considerable time has elapsed and thus the family is able to survive till now.

6. The learned counsel for the petitioner has further submitted that the tribunal without considering the situation of the petitioner's family and the 2nd petitioner is taking care of entire



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family, merely on the ground that the 2nd petitioner is married, rejected the petitioners' request. The learned counsel for the petitioner has further submitted that the tribunal ought to have considered that the 1st petitioner is the dependent of the deceased employee and she has to be taken care of, when this being the case, only the 2nd petitioner can act as a bread winner of the family and can take care of the 1st petitioner. Therefore, the impugned rejection order passed by the tribunal is liable to be set aside.

7. On the other hand, while the learned Additional Government Pleader appearing for the respondents vehemently opposing the submissions made by the learned counsel for the petitioners, has submitted that the claim of the 2nd petitioner who is a married daughter seeking for compassionate ground appointment was rejected not because of her marital status but for the reasons it does not fulfill the criteria laid down by the Railway Board for offering compassionate appointment.

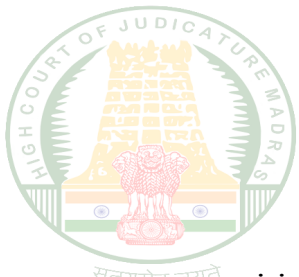


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8. The learned standing counsel appearing for the respondent/Railways submitted that as per Railway Board Letter No. E(NG) III/78/RC-1/1 dated 03.02.1981, while considering married daughter for compassionate ground appointment the criteria whether the married daughter will be the bread winner for bereaved family has to be examined. In terms of Railway Board's Clarification vide Letter No. E(NG)II/99/RC-1/ICF/4, dated 30.07.1999 & 03.08.1999, if there are no other wards to be looked after, then there would be no justification for considering married daughter for compassionate appointment. Further the financial condition of the deceased family is also an important criteria for offering compassionate appointment.

9. The learned standing counsel has further submitted that in the impugned order in O.A.No. 1417 of 2017, the tribunal has rightly rejected the petitioners' claim by clearly stating the reason that the 1st petitioner is in receipt of a decent family pension and there are no minor children to be looked after by her. Further the 1st



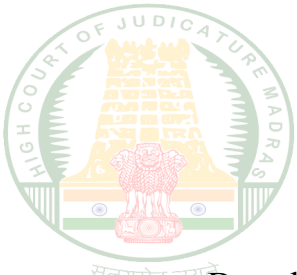
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petitioner's husband died on 07.07.2010 and a considerable time has been elapsed and thus the family survived till now. The said order of the tribunal is perfectly valid and does not require any interference by this Court.

10. Heard both sides and perused the documents available on record.

11. Admittedly, the 2nd petitioner who is the daughter of the deceased G.Adhimoolam has made a representation to the respondents seeking compassionate appointment on 07.03.2011 and the same was rejected by the respondents on 24.01.2013. A perusal of records also reveal that despite the directions issued by the tribunal to consider the request of the 2nd petitioner for compassionate appointment in the earlier two original applications filed by the 2nd petitioner, the respondent has rejected the same. Thereafter, on the third original application in O.A.No. 1417 of 2017, which is impugned in the present writ petition, the tribunal has rejected the petitioners request based on the Railway Board Letter No. E(NG) III/78/RC-1/1 dated 03.02.1981 and the Railway



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Board's Clarification vide Letter No. E(NG)II/99/RC-1/ICF/4, dated 30.07.1999 & 03.08.1999 and also observed that the only survivor in the deceased employee's family is the first applicant/1st petitioner herein who is in receipt of a decent family pension.

12. In support of their contention, the learned counsel for the petitioners has placed reliance on the judgment of the Hon'ble Supreme Court in *S.L.P.(C)No. 20166 of 2021, dated 17.12.2021*, wherein the Hon'ble Supreme Court upheld the decision of the High Court of Karnataka wherein the High Court of Karnataka struck down the Rule 3(2)(i)(c) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules which shows discrimination against the married daughters seeking jobs on compassionate appointment. The relevant portion of the judgment of Karnataka High Court in the case of *Bhuvaneshwari V. Puranik v. State of Karnataka*, reported in 2020 SCC OnLine Kar 3397 is extracted hereunder;

15.5. The Rule that is called in question and has Mien for interpretation, without a shadow of a doubt is discriminatory as



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the words “unmarried” permeates through the entire fabric of Rule 2 and 3 as extracted hereinabove to deny appointment to a married daughter. If the Rule is left as it is, in view of my preceding analysis, would create a discrimination on the basis of gender. If the marital status of a son does not make any difference in law to his entitlement for seeking appointment on compassionate grounds, the marital status of a daughter should make no difference, as the married daughter does not cease to be a part of the family and law cannot make an assumption that married sons alone continue to be the part of the family. Therefore, the Rule which becomes violative of Articles 14,15 on its interpretation will have to be struck down as unconstitutional as excluding the daughters purely on the basis of marriage will constitute an impermissible discrimination which is invidious and be violative of Articles 14 and 15 of the Constitution of India. It should be remembered that “nature bestows so much on women; the law cannot bestow too little”.

13. In the said judgment, the High Court of Karnataka has observed that marital status shouldn't affect entitlement for compassionate appointment; married daughters remain part of the family as well. Hence, held that the Rule 3(2)(i)(c) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 becomes violative of Articles 14,15 of Constitution of India, accordingly struck down the word 'unmarried' from the said Rules.



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14. Undoubtedly, the principle of gender equality and non-discrimination is of paramount importance. We accept that no contrary view can be taken in considering compassionate appointment for married daughters of the family unless they satisfy other criteria viz., dependency, financial status, etc., as laid down in the relevant Rules or Act.

15. In the present case, the tribunal in the impugned order, has rejected 2nd petitioner's request based on the Railway Board's Letter No. E(NG) III/78/RC-1/1 dated 03.02.1981 and the Railway Board's Clarification vide Letter No. E(NG)II/99/RC-1/ICF/4, dated 30.07.1999 & 03.08.1999 wherein the Railway Board has examined the criteria for compassionate appointment to married daughter of the deceased family and clarified in the above letter that if there are no other wards to be looked after, then there would be no justification for considering married daughter for compassionate appointment. Further the financial condition of the deceased family is also an important criteria for offering compassionate appointment.



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16. Undisputedly, the 2nd petitioner herein who sought for compassionate appointment, got married in the year 2006 i.e four years before the death of her father/deceased employee. The son and two other daughters also got married. The 1st petitioner/wife of the deceased employee was receiving family pension of Rs.18,734/- on the date of impugned order passed by the Tribunal. She has no other dependent minor children to be taken care of after the death of the employee. It is clear that the rejection order was not passed by the respondents because of her marital status but based on the financial status of the deceased family as per the criteria laid down by the Railway Board for offering compassionate appointment. Therefore the judgment of the High Court of Karnataka relied by the learned counsel for the petitioner only for the ground that the married daughter of the deceased family also to be considered for compassionate appointment is not relevant to the entire facts of the present case.



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17. To support his contention in respect of consideration of financial situation of the family while granting compassionate appointment, the learned standing counsel appearing for respondents has placed the Judgment of the Hon'ble Division Bench of this Court in the case of ***Registrar, Tamil Nadu Veterinary and Animal Sciences University and Another Vs. H.Priyadharshini reported in (2019) 4 MLJ 46.*** The relevant portion of the judgment is extracted hereunder;

“8. It is seen from the aforesaid data that apart from the lumpsum of about Rs. 12,00,000/- received on account of the Death Cum Retirement Gratuity and other security funds, the widow of the deceased is eligible to a substantial amount of family pension of Rs. 77,311/- every month (including dearness allowance), which cannot, by any stretch of imagination, be said to be inadequate to meet the needs of the mother and brother of the Petitioner. Moreover, having regard to the fact that the Petitioner is married and living with her husband, who is presumed to be employed on account of his undertaking to take care of the mother and brother of the Petitioner, it appears that the Petitioner was not a dependent of the deceased employee at the time of his demise. These circumstances, taken as a whole, go to show that the family of the deceased cannot be said to be in penury



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so as to require compassionate appointment to one of its members.

9. As such, we are of the considered view that the present case was not a fit one to direct the Respondents to consider the Petitioner for compassionate appointment. It is needless to add here that nothing precludes the Petitioner, if she is otherwise eligible to apply during recruitment in the usual course for any vacant post in Madras Veterinary College, for which she is qualified, when it is notified, so that if she is selected, she could provide monetary assistance to her mother and brother, if she so intends. “

19. The Hon'ble Supreme Court in various decisions relating to the compassionate appointment held that 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 while granting compassionate appointment. In this context, it is also useful to rely upon the following decisions of the Hon'ble Supreme Court;



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19.1 In Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138], the Honourable Supreme Court has held as follows:

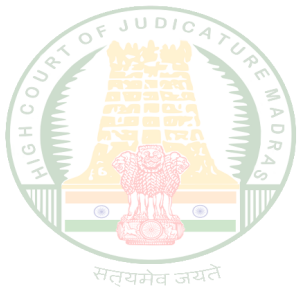
“The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family 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.”

19.2 In Bhawani Prasad Sankar vs. Union of India and Others [2011 (3) LLN 37 (SC)], the Honourable Supreme Court has held as follows:

“(i) Compassionate employment cannot be made in the absence of Rules or Regulations issued by the Government or a Public Authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make Compassionate Appointment dehors the Scheme.

(ii) ...

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service.



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Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.”

20. In the case on hand also the 2nd petitioner who got married 4 years prior to the death of his father and living separately with her family cannot be considered as dependant to the deceased employee. As discussed above, the wife of the deceased employee/1st petitioner herein received a lumpsum settlement amount of Rs.6,01,934/- from the respondent-department and has been receiving family pension of Rs.18,734/- per month. Therefore 2nd petitioner who as presumed to be employed on account of his undertaking to take care of mother and family members was not dependant of deceased employee at the time of his demise.

21. On over all considreation of the facts of cirumstances of the case and the judgments cited supra, We are of the considered view that the 2nd petitioner namely A. Venkateswari, does not meet the established criteria for granting compassionate appointment as



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per the Railway Board's Letter No. E(NG) III/78/RC-1/1 dated 03.02.1981 and the subsequent clarification of the Railway Board vide Letter No. E(NG)II/99/RC-1/ICF/4, dated 30.07.1999 & 03.08.1999. The Tribunal has rightly considered all these aspects and rejected the petitioner request for compassionate appointment, confirming the rejection orders passed by the respondent-authority. We do not find any reason to interfere with the impugned order passed by the tribunal.

22. In the result, the writ petition is dismissed, confirming the impugned rejection order passed by the Central Administrative Tribunal in O.A. No. 310/1417/2017, dated 21.02.2018. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K., J.] [P.B.B., J.]

30.08.2023

Index:yes
Internet:yes
Speaking order
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To
1.The Secretary,



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Government of India,
543, Rail Board, Raisina Road
New delhi – 110 001.

2.The General Manager,
Head Quarters, Southern Railway,
Park town, Chennai-600 003.

3.Chief personal officer,
Head quarters, Southern Railway, Park town
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5. The Divisional personnel pfficer,
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Southern Railways, Madurai.

6.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai – 600 104.



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VERDICTUM.IN



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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

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**Pre-Delivery Order in
W.P.No.19408of 2019
and M.P.No.18905 of 2019**

30.08.2023