

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.19466 of 2019

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner, wherein the following prayer is made:

“.....to issue Writ, order or direction, more in the nature of Writ of Mandamus to declare the impugned order No.A4/412/2019 Endorsement dated 22.07.2019 issued by the 1st respondent and Memo No.17414/Ser.A/2007, dated 07.12.2007 issued by the 2nd respondent in not consider the case of the petitioner case compassionate appointment by holding the orders of 1st and 2nd respondents as illegal, arbitrary, unreasonable and unconstitutional and it amounts to violation of Articles 14, 16, 21 of Constitution of India, and contrary to the presidential order 1975, principles of natural justice and contrary to the legislative intension and set aside the same, direct the respondents to provide appointment in any suitable post under compassionate grounds in the interest of justice and to pass such other further orders....”

[reproduced verbatim]

2. I have heard the submissions of Sri P.Lakshmana Rao, learned counsel for the petitioner, learned Assistant Government Pleader for Services-II representing the Respondent Nos.1 to 6 and perused the record.

3. The facts of the case, in brief are that the husband of the petitioner was a Doctor working under State Government. He died in harness on 30.10.2017. Immediately thereafter, the petitioner, being the legally wedded wife of the deceased Doctor, made a representation, dated 18.12.2017 to the respondent authorities requesting them to provide employment on compassionate grounds. When the said representation, dated 18.12.2017 was not acted upon

by the respondents, the petitioner filed W.P.No.163 of 2019 before this Court and this Court, *vide* order, dated 04.01.2019 disposed of the said writ petition directing the respondents to consider the case of the petitioner for appointment on compassionate grounds by duly considering the representation submitted by her on 18.12.2017 and pass appropriate orders in accordance with law within a period of eight weeks from the date of receipt of a copy of the said order. Thereafter, the respondent No.1, *vide* Endorsement No.A4/412/2019, dated 22.07.2019 rejected the request for compassionate appointment to the petitioner on the ground that the petitioner was not a "local candidate" and that her request for compassionate appointment was not found to be in accordance with the guidelines issued *vide* Government Memo No.17414/Ser.A/2007, dated 07.12.2007. Aggrieved thereby, the petitioner filed this writ petition seeking the relief stated supra.

4. Learned counsel for the petitioner would submit that since the husband of the petitioner died in harness, the petitioner, being his legally wedded wife is entitled for compassionate appointment. Since the purpose of providing appointment on compassionate grounds is to mitigate hardship caused due to the death of the bread winner in the family, the respondents ought to have provided compassionate appointment to the petitioner since she has to maintain herself and her three daughters. On the death of the husband of the petitioner,

the family suffered great loss without livelihood. Though the petitioner made a representation, within one and half month after the demise of her husband, the respondents, after a lengthy official correspondence of two years, ultimately rejected the claim of the petitioner. The respondents are not justified in doing so. Further, the petitioner is a qualified B.A.M.S. Doctor. Pursuant to her marriage, she left practice and confined herself to the household duties. Taking into consideration of the educational qualifications of the petitioner, the respondents ought to have given compassionate appointment to the petitioner as an Ayurvedic Doctor in any Ayurvedic Dispensaries/Hospitals in the State.

5. On the other hand, the learned Assistant Government Pleader for Services-II representing the Respondent Nos.1 to 6 would submit that on receipt of the application, dated 18.12.2017 submitted by the petitioner seeking compassionate appointment, since the petitioner requested for the post of Medical Officer (Ayurvedic), her application along with all original certificates and documents have been submitted to the Director of Public Health and Family Welfare, Hyderabad to take further necessary action, *vide* office letter, dated 25.10.2018. Meanwhile, the petitioner approached this Court by filing W.P.No.163 of 2019. Pursuant to the orders passed by this Court in the said writ petition, a letter was addressed to the Director of Public Health and Family Welfare, Telangana State, Hyderabad to

communicate orders, if any, to the Respondent No.2 to take further action in the matter. Further, keeping in view of the orders of this Court passed in W.P.No.163 of 2019, the Respondent No.1 has offered remarks in the matter to furnish proposals in full shape for taking further necessary action in the matter. Since there was no vacancy available against S.T. category in the office of the respondent No.2, the proposals for compassionate appointment have been submitted to the respondent No.1 *vide* letter, dated 14.03.2019. On verification of the certificates of the petitioner, it was found that her nativity is of Maharashtra State and she is a non local candidate as per the Presidential Order. The petitioner belongs to S.T. category as per her caste certificate issued by the Tahasildhar, Utnoor Mandal, Adilabad District, dated 03.10.2018. Thus, the proposal for compassionate appointment of the petitioner was not found to be in accordance with the guidelines issued by the Government *vide* Memo No.17414/Ser.A/2007, dated 07.12.2007, according to which, *"all the appointments on compassionate grounds to the dependants of the deceased Government employees, be made only in the 'local cadre' to which the applicant is a local candidate"*. In terms of the above Government Memo, the request of the petitioner for compassionate appointment could not be considered as she belongs to Maharashtra State. Accordingly, the respondent No.1 issued Endorsement, dated 22.07.2019 rejecting the case of the petitioner. Further, the request

of the petitioner cannot be considered either to the post of Medical Officer or to any other post in terms of the aforesaid Government Memo, dated 07.12.2007. The petitioner has studied in the State of Maharashtra i.e. Yavatmal from Class-V to X during the year 1992-1998. Compassionate appointment is not a vested right which can be exercised at any time after the death of a Government servant. The Government/Public authority concerned has to examine the financial condition of the family of the deceased and if it is satisfied that, but for the provision of the 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, provided a scheme or rules provided for the same. Since the petitioner was native of Maharashtra and is not a 'local candidate' in terms of the Government Memo, dated 07.12.2007, the case of the petitioner for compassionate appointment was not considered. There is no arbitrariness or unreasonableness in rejecting the request of the petitioner so as to interfere with the same by this Court under Article 226 of the Constitution of India. The contentions raised on behalf of the petitioner are untenable. There are no merits in this writ petition and ultimately prayed to dismiss the writ petition.

6. In view of the above rival contentions, two points arises for consideration in this writ petition – (1) Whether the petitioner is entitled for compassionate appointment in lieu of the death of her husband who died in harness? and (2) If so, whether the respondents

can be directed to offer appointment to the petitioner in the post requested by her in the letter, dated 18.12.2017, in view of her educational qualifications.

7. **POINT No.1:** It is not in dispute that the husband of the petitioner, while working as Civil Assistant Surgeon, UPHC, Taramaidan, expired while in service on 30.10.2017 leaving behind his wife and minor three daughters. It is also not in dispute that the petitioner herein is the legally wedded wife of the deceased Government Employee. Furthermore, admittedly, the petitioner made the said representation, dated 18.12.2017 to the respondents seeking compassionate appointment, within one and half month from the date of death of her husband. When the said representation was not considered by the respondents, she filed W.P.No.163 of 2019 before this Court and this Court, *vide* order, dated 04.01.2019, disposed of the said writ petition directing the respondents to consider the case of the petitioner for appointment on compassionate grounds by duly considering the representation submitted by her on 18.12.2017 and pass appropriate orders in accordance with law within a period of eight weeks from the date of receipt of a copy of the said order. The said direction came to be issued by this Court on the contention of the learned Government Pleader appearing for the respondents that the case of the petitioner would be considered in

accordance with law and appropriate orders would be passed by the respondents. However, *vide* Endorsement, dated 22.07.2019, the respondent No.1 rejected the request of the petitioner on the ground that her request for compassionate appointment cannot be considered in terms of the Government Memo No.17414/Ser.A/2007, dated 07.12.2007 and that the petitioner is not a local candidate as per the proposals received from the office of the Respondent No.3.

8. Here it is apt to state that the main object sought to be achieved by the policy of compassionate appointment is to relieve the family of the deceased employee from the grave financial hardship caused to which due to the sudden loss of the bread winner. It is intended to provide immediate succour to the family of the deceased employee. Favourable treatment given to such dependents of the deceased employee would render nexus with the object sought to be achieved, viz., relief against destitution. Though consideration for compassionate appointment is not a vested right which can be exercised at any time, its object is to enable the family to get over the financial crisis which it faces at the time of death of the sole bread winner.

9. In **Balbir Kaur Vs. Steel Authority of India Limited**¹, the Hon'ble Apex Court held that in the case of appointment considering

¹ (2000) 6 SCC 493

the social and economic justice as enshrined in the constitution, denial of deserving cases are liable to be set aside. Further, the purpose of providing the compassionate appointment to a wife/son /daughter or a near relative of the deceased Government servant is to render assistance to the family, which is found in indigent circumstances. Hence, in considering the case for compassionate appointment, the authorities are supposed to adopt a humane outlook.

10. Majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death, being a consequence of birth, is inevitable for every being at some part of time. Thus, while death is certain, its timing is uncertain. Further, deceased employee does not always leave behind valuable assets; he may, at times, leave behind poverty to be faced by the immediate members of the family. Therefore, the question is what should be done to ensure that the death of an individual does not mean economic death for his family. The States obligation in this regard, confined to its employees who died in harness, has given rise to the schemes and rules providing for compassionate appointment of an eligible member of the family as a necessity of providing immediate succour to such a family. Support for such a provision has

been derived as per the provisions of Para IV of the Constitution of India i.e., Article 39 of the Directive Principles of State Policy.

11. In Umesh Kumar Nagpal Vs. State of Haryana², the Hon'ble Apex Court observed that object of granting compassionate appointment is to enable the family of a deceased Government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment; that mere death of an employee in harness does not entitle his family to such source of livelihood; the Government/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, provided a scheme or rules provide for the same.

12. In Haryana State Electricity Board V. Hakim Singh³, the Hon'ble Apex Court placed much emphasis for immediacy in the manner in which claims for compassionate appointments are made by the dependants and decided by the concerned authority. In the said decision, the Hon'ble Apex Court observed that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has

² (1994) 4 SCC 138

³ (1997) 8 SCC 85

befallen the dependants on account of untimely demise of a sole earning member.

13. In **State of Haryana V. Ankur Gupta**⁴, the Hon'ble Apex Court held that in order to claim the compassionate appointment to be considered reasonable and permissible, it must be done that a sudden crisis occurred in the family of the deceased as a result of death of an employee. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be available to all types of posts irrespective of the nature of service rendered by the deceased employee.

14. There is an inconsistent line of authority of the Hon'ble Apex Court on the principle that appointment on compassionate grounds is to be given only to meet the immediate unexpected hardship which is faced by the family by reason of death of the sole bread winner. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

⁴ AIR 2003 SC 3797

15. In a very recent judgment in the **State of West Bengal Vs. Debabrata Tiwari**⁵, the Hon'ble Apex Court summarised the principles regarding compassionate appointment as follows:

"7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and material status of its members, together with the income from any other source".

16. On a critical analysis of the ratio laid down by the Hon'ble Apex Court in the aforementioned citations, it can be culled out that the object underlying the provision for grant of compassionate appointment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of sole earning member, who has left the family in penury and without any means of livelihood and that out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is

⁵ 2023 Live Law SC 175

made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment.

17. Reverting to the facts of the case on hand, the petitioner was denied compassionate appointment on the ground that she is a non local candidate as per the Government Memo, dated 07.12.2007. There is no dispute that the petitioner is the legally wedded wife of the deceased Government employee. The marriage between the petitioner and the deceased Government employee was performed on 05.09.2007. There is also no dispute that the petitioner and the deceased Government employee were blessed with three daughters. It is the case of the petitioner that after marriage, she confined herself to the family and was not doing any job. The 'No Earning Certificate' issued by the Tahasildhar, Utnoor Mandal of Adilabad District, Government of Telangana makes it clear that the petitioner is an unemployee. Further, the certificate issued by Andhra Board of Ayurveda *vide* Registration No.21866 reveals that the petitioner is a Class-1 Medical Practitioner. Admittedly, after marriage, the petitioner stayed with her husband till the time of his death.

18. Thus it is clear that the petitioner, after her marriage with the deceased Government employee on 05.09.2007, has been staying in the State of Telangana along with her husband till the time of his death in harness on 30.10.2017. Merely because she studied at Maharashtra from Class V to X during the year 1992-98 does not

mean that she belongs to Maharashtra State and would become non local in the Telangana State *qua* her request for providing job on compassionate grounds. Except for her educational qualifications which were acquired by her by studying at Maharashtra, for all practical purposes, the petitioner needs to be treated as a local candidate of Telangana State. Hence it is not open to the respondents to deny compassionate appointment to the petitioner on an hyper technical ground that the petitioner is not eligible to be appointed on compassionate grounds since she is not a local candidate, which, if permitted would defeat the wholesome underlying object of the scheme of compassionate appointment. Viewed thus, the Endorsement No.A4/412/2019, dated 22.07.2019 issued by the Respondent No.1 cannot withstand the test of judicial scrutiny and is liable to be set aside.

19. Coming to the next question as to whether the petitioner is entitled to be appointed in the post requested by her i.e. Medical Officer, it is apt to state that since the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to the death of the bread winner of the family, in a matter of compassionate appointment, there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided to the bereaved family which would not be able to make both ends

meet, a provision is made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate appointment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of those other persons who are eligible for appointment against a post, which would have been available, but for the provision enabling appointment being made on compassionate grounds. As it is in the nature of exception to the general provisions, it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. The appointment on compassionate ground cannot become another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of death of the employee while in service. Thus, it is the discretion of the Government to give appointment on compassionate grounds to a person in which, he/she would be found suitable and this Court, under Article 226 of Constitution of India, cannot direct the Government to provide compassionate appointment to a person in a particular post. In the instant case, though the petitioner requested for compassionate appointment in a particular post, i.e. Medical Officer, it is for the respondents to decide as to for which post the petitioner would be found suitable.

20. For the foregoing discussion and taking into consideration the totality of the facts and circumstances of the case, this Court is of the firm opinion that the petitioner is entitled for appointment on compassionate grounds in a post to which she is found suitable by the respondents.

21. Resultantly, this writ petition is allowed. The impugned Endorsement No.A4/412/2019, dated 22.07.2019 issued by the Respondent No.1, rejecting the request of the petitioner for compassionate appointment is hereby set aside. The respondents are directed to consider the case of the petitioner for grant of compassionate appointment in a suitable post, in accordance with the governing rules and regulations. The said exercise of considering the case of the petitioner for grant of compassionate appointment and passing appropriate consequential orders shall be concluded within a period of sixty (60) days from today.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. Parties to bear their own costs.

JUVVADI SRIDEVI, J

Date:31.07.2023

Note:

LR copy to be marked.

(B/o)

Ksk