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W.P.No.25109 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.11.2023

DELIVERED ON:14.12.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE P.DHANABAL

W.P.No.25109 of 2017
and WMP.No.26550 of 2017

- 1.Union of India,
Represented by General Manager,
Southern Railway,
Park Town, Chennai-600 003.
- 2.The Chief Personnel Officer,
Southern Railway,
Head Quarters, Park Town,
Chennai -600 003.
- 3.The Senior Divisional Personnel Officer,
Divisional Office,
Palghat-678 001.
- 4.The Divisional Railway Manager,
Palghat Division,
Palghat - 678 001.

.. Petitioners

Vs.



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1.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

2.P.Bhuvana

3.P.Prabhakaran

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the 1st respondent in O.A.No.310-00452-2015 including the order dated 29.03.2016 and quash the same.

For Petitioners : Mr.P.T.Ramkumar

For Respondents : R1 -Tribunal

Mr.Leelesh Sundaram

for M/s.Nathan and Assoc. for R2 & R3

ORDER

D.KRISHNAKUMAR, J.

This writ petition has been filed challenging the order of the Central Administrative Tribunal, Chennai dated 29.03.2016 made in O.A.No.310-00452-2015, in and by which the Tribunal has set aside the order of the respondents 2 and 3 and directed the railways to consider the case of the third respondent for appointment on compassionate ground within a period of three months from the date of receipt of a copy of this order.



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2. Facts of the case, briefly narrated, are as follows:

2.1. The second respondent is the first wife of the deceased railway employee late Sri.R.Palani, who died on 30.08.2003 while working as a Keyman in Bommidi.

2.2. After the demise of the railway employee, the second respondent filed a Suit in O.S.No.598 of 2004 before the District Munsif Court, Karur against one Kuppu, who is the second wife of the deceased railway employee, praying for a declaration that the second respondent is the legally wedded wife of the deceased employee and for permanent injunction restraining the railways from disbursing the amounts payable to the estate of the deceased to Smt.Kuppu. The said Suit was transferred to the file of District Munsif Court, Pappireddipatti and renumbered as O.S.No.471 of 2008 and decreed on 10.07.2008. The appeal filed by Kuppu / second wife against the said decree in A.S.No.23 of 2009 was disposed on by judgment dated 09.11.2010 holding that the matter has been settled out of Court. The terminal benefits entitled to the deceased



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employee were accordingly disbursed to the second respondent and family pension was also sanctioned to her.

2.3. The second respondent, after a period of 8 years from the date of death of the employee, strangely submitted a representation / application to consider the case of the third respondent for appointment on compassionate ground, who is the son of the second wife. Since the third respondent was not born out of legal wedlock, but was born to Kuppu, who was not the legally wedded wife of the deceased employee, in terms of the rules governing compassionate ground appointment, more particularly RBE No.1 of 1992 dated 02.01.1992, the case of the second respondent to consider the case of the third respondent for appointment on compassionate ground was rejected on 02.01.2012.

2.4. The second respondent once again submitted an application for appointment on compassionate ground on 27.07.2013 and the said application was also rejected by the petitioner Department on 13.08.2013.



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2.5. Challenging the aforesaid rejection orders, the respondents 2 and 3 filed O.A.No.310-00452-2015 and it was allowed, vide order dated 29.03.2016. Aggrieved by the same, the petitioners / Southern Railways has filed the instant writ petition.

3. Mr.P.T.Ramkumar, learned counsel for the petitioner department contended that rules have been prescribed for appointment on compassionate ground in Railways Circular RBE No.1/92 and as per the said Circular, appointment on compassionate grounds to the second wife/widow and her son will be considered unless the second marriage is permitted, in special circumstances, taking into account the personal law etc. It is further contended that the representation seeking compassionate appointment was given by the second respondent on 18.07.2011 and 13.12.2011, nearly after 8 years from the death of the employee and therefore, claim of the respondents 2 and 3 is barred by limitation. Further the circular of the Railway Board dated 02.01.1992 clearly stipulates that children of the second marriage of the employee shall not be eligible for compassionate appointment and the third respondent,



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being the son of Kuppu, who was not the legally wedded wife of the deceased employee, cannot claim compassionate appointment and prays for setting aside the order passed by the Tribunal and allowing of the writ petition. The learned counsel for the petitioners, in support of his submissions, has placed reliance upon a Division Bench decision of this Court in W.P.No.20948 of 2019 dated 31.08.2023, passed in a similar situation.

4. Mr.Leelesh Sundaresh, learned counsel for the respondents 2 and 3 would contend that the third respondent is not eligible for compassionate appointment on the ground that he was born to the 2nd wife of Late Palani namely, Kuppu and the said finding does not hold good in the eye of law in view of the settled law that children born out of 2nd wedlock are competent to claim their interest and they have equal rights as they are treated as legal heirs and therefore, prayed for dismissal of the writ petition.



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5. Heard the learned counsel for the parties and perused the materials on record.

6. The following facts are not in dispute:

(i) The second respondent is the first wife of the deceased and third respondent is the son of one Kuppu, who claims to be the second wife of the deceased. The railway employee died on 30.08.2003.

(ii) The second respondent filed a Suit in O.S.No.598 of 2004 on the file of the District Munsif Court at Harur against one Kuppu /second wife and the Suit was decreed in favour of the second respondent on 10.07.2008.

(iii) However, strangely the application for compassionate appointment was filed by the second respondent claiming compassionate appointment to the third respondent was submitted on 13.12.2011, i.e., 8 years after the demise of the railway employee.

(iv) As per circular of the Railway in RBE No.1/92 dated 02.01.1992, the claim of the second respondent seeking compassionate appointment to the third respondent was rejected on 02.01.2012.



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(v) The subsequent representation of the second respondent submitted on 27.07.2013 was also rejected by the petitioners Department on 13.08.2013.

7. A Division Bench of this Court in W.A.No.1749 of 2019 ***(Sudhanthira Devi vs. The State of Tamil Nadu and others)*** [in the said Judgment, myself (DKKJ) is one of the member] by Judgment dated 03.09.2019, following the decisions of the Hon'ble Supreme Court, has held that applications for compassionate appointment submitted beyond the period of three years cannot be entertained.

8. In ***Government of India and another v. P.Venkatesh [(2019) 15 SCC 613]***, the Honourable Supreme Court has held as follows:

“8. This ‘dispose of the representation’ mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by



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calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9-8- 2016, nearly twenty one years had elapsed since the date of the death of the employee.

9. ...

10. Bearing in mind the above principles, this Court held: (*Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138) SCC pp.141-42, para 6)

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

9. The Hon'ble Full Bench of this Court in Paragraph No.13 of the **Judgment dated 11.03.2020 in W.P.(MD) No.7016 of 2011** has held as follows:

*“13. In the light of the above we find that the judgment in the case of *A.Kamatchi v. The Chairman, Tamil Nadu Electricity Board*,*



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(2013) 2 CWC 758 is not only contrary to the law laid down in the case of E.Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above."

10. In the case on hand, admittedly, the Railway employee died on 30.08.2003, while he was working as Keyman in Bommidi and the application for compassionate appointment was submitted by his wife/second respondent herein on 13.12.2011, nearly after 8 years, strangely claiming compassionate appointment for the third respondent, who is the son of the second wife of the deceased, namely Kuppu. Therefore, in view of the above settled legal position, the claim of the petitioner made beyond the prescribed period of three years cannot be entertained and it deserves to be rejected.



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11. In **Umesh Kumar Nagpal vs. State of Haryana [(1994) 4**

SCC 138], the Hon'ble 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.” (emphasis supplied)

12. 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



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invalidation of the breadwinner while in service. 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.” (emphasis supplied)

13. The object of giving compassionate appointment is to get over the sudden financial crisis that occur on account of the death of the employee. In the case on hand, the railway employee died on 30.08.2003 and the family is able to survive for almost 20 years as of now and as such, claim of the respondents 2 and 3 at this distant point of time cannot be legally countenanced.

14. This Court had an occasion to deal with a similar issue [in which one of us DKKJ is a member of the Bench] in ***W.P.No.20948 of 2019 dated 31.08.2023 [Union of India and Others v. The Registrar, CAT, Chennai]***, wherein this Court observed as under:

"13. First and foremost, compassionate appointment is the discretion of the employer and the relatives/legal heir of the deceased employee cannot seek such appointment on compassionate ground as a matter of right. Infact in recent pronouncements of the Hon'ble Supreme Court, the Apex Court has come down heavily in cases wherever there has



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been delay in seeking appointment on compassionate ground. Admittedly, the main objective of providing such appointment on compassionate ground is to help the family in distress, having lost their bread winner. If the family is able to survive without such appointment on compassionate ground, then there is no necessity for providing such appointment in the first place. Infact the Hon^{ble} Supreme Court in the cases discussed herein above namely, ***State of J&K and Ors Vs. Sajad Ahmed Mir Case [(2006) 5 SCC 766]*** & ***State of Himachal Pradesh and another Vs. Shashi Kumar [(2019) 3 SCC 653]***, has clearly held that delay is a very material and relevant fact and that has to be considered.

14. In the case on hand, admittedly the deceased employee died on 10.12.2002. No doubt a Civil Suit was pending before the Family Court from the year 2003 and the same came to be settled amongst the legal heirs only in 2006, pursuant to which the representation seeking appointment on compassionate ground was made on 30.05.2006. It is however seen that the said representation was rejected on 12.07.2006 itself, having slept over the matter for close to six years, the 2nd respondent chose to give another representation on 21.06.2012, which also came to be rejected on 30.09.2012. Challenging the said order of rejection, the OA came to be filed before the Tribunal. There is also force in the submissions of counsel for the petitioners that on the date of the death of the employee, the circular dated 02.01.1992 in RBE No.1/1992 held the field and merely because there was a change in policy subsequently, the revised rules cannot be applied to the cases that had arisen earlier. The Hon^{ble} Supreme Court in ***State of Madhya Pradesh and Ors Vs. Ashish Awasthi Case [(2022) 2 SCC 157]*** has clearly settled the position that any claim for compassionate appointment must be decided on the basis relevant Scheme prevalent on the date of the demise of the employee and any subsequent



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change in the scheme cannot be looked into. Further, in any event, the respondents 1 & 2 have not explained the delay between 2006 to 2012, namely the two dates on which the representations were given, seeking appointment on compassionate ground. Applying the ratio laid down by the Hon'ble Supreme Court, it is clear that the respondents 1 & 2, have been able to sustain themselves even without the appointment on compassionate ground. Moreover it is now more than 20 years since the employee died. At the length of this time, it is not equitable to direct the petitioners to consider the appointment of the 2nd respondent on compassionate ground.

15. Even though Division Bench of this Court in Union of India Vs. M.Karumbayee and Ors reported in(2017) SCC Online Mad 13030, has held that children born out of a void marriage are also eligible for appointment on compassionate grounds, which came to be affirmed by the Hon'ble Supreme Court on 11.12.2018 in Union of India and Another Vs. V.R.Tripathi reported in 2019 14 SCC 646, we are unable to apply the ratio laid down therein, to the facts of the present case for the reason that in the said case there was no discussion with regard to the aspect of delay. In the present case, we have already seen that, despite having given a representation in 2006, seeking appointment on compassionate ground and the petitioners having rejected the same immediately thereafter, the respondents 1 & 2, for totally unexplained reasons, chose to remain silent for 6 years, before they made a second representation on 21.06.2012.

16. The Tribunal has not considered the settled legal position in this regard and in view of the various discussions made herein above we are constrained to interfere with the order of the Tribunal."

15. The aforesaid Division Bench decision of this squarely applies



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to the facts of the present case. Admittedly, in the case on hand also, the claim for compassionate appointment was sought to the third respondent, who was not born out of the legal wedlock of the deceased. Moreover, the application for compassionate appointment was submitted nearly after 8 years from the death of the employee and it is now almost 20 years since the death of the railway employee. At this distant point of time, the claim for compassionate appointment cannot be considered, as the same would defeat the very object of the scheme of compassionate appointment. The Tribunal has failed to consider these aspects in proper perspective. This Court finds much force on the contention of the petitioners Department and in the light of the Division Bench decision of this Court in W.P.No.20948 of 2019 dated 31.08.2023, the order of the Tribunal warrants interference and the same is liable to be set aside.

16. In the light of the reasons assigned above, the Writ Petition stands allowed and the order of the Tribunal in O.A.No.310-00452-2025 dated 29.03.2016 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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



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**D.KRISHNAKUMAR, J.,
&
P.DHANABAL, J.**
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**Order in
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