

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

W.A.No. 2218 of 2015 IN WP(C).11346/2013

AGAINST THE JUDGMENT IN WP(C) 11346/2013 of HIGH COURT OF KERALA
DATED 01-09-2015

APPELLANT/PETITIONER:

SUNIL KUMAR P.G.
S/O.LATE GANGADHARAN, PARIYANGATTU HOUSE, MANJAKKARA
MANKARA RAILWAY STATION P.O, PALAKKAD DIST. 678 613.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS/RESPONDENTS:

1. DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM -695 001.
2. THE DEPUTY DIRECTOR OF EDUCATION
PALAKKAD - 678 001.
3. THE ASSISTANT EDUCATIONAL OFFICER
CHERPULASSERY, PALAKKAD DISTRICT -678 001.
4. THE MANAGER
AUP SCHOOL, POMBRA, POMBRA P.O
PALAKKAD DISTRICT-678 505

R BY GOVERNMENT PLEADER SRI.M.A.FAYAZ
R BY SRI.V.A.MUHAMMED

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

W.A.No.2218 of 2015

Dated this the 9th day of October, 2015

JUDGMENT

Asha, J.

1.Appellant claims compassionate appointment on account of death of his father Gangadharan who was working as Peon in the school of the 4th respondent. The death occurred on 6.3.1980 while he was in service. Producing Exts.P1 to P3, appellant submits that his brother had filed application for compassionate appointment immediately after he attained majority in the year 1993. But the management has denied receipt of any such application. Exts.P1 to P3 are letters of the grandfather of petitioner addressed to the Director of Public Instruction, during 1993-95, requesting for employment for his brother, under the dying in harness scheme.

2. Admittedly, appellant has submitted his application only in the year 2006, though he attained majority in the year 1998. Learned single Judge dismissed the writ petition seeing that the appellant chose to

submit application only in the year 2006, i.e., 8 years after he attained majority. The death of father occurred in the year 1980 and the Government orders relating to compassionate appointment were issued on 24.5.1999. Petitioner did not care to submit his application within 3 years of attaining majority. The reason stated is that application of his brother was pending, for which, there is no evidence.

3. We heard learned counsel for the appellant and learned Government Pleader for the official respondents.

4. It is seen that the appellant's father died while in service as Peon in the year 1980. Appellant's claim that his brother had submitted application before the educational authorities and the same was pending cannot be accepted. The case of the management is that they have not received any application as claimed, except from petitioner. At any rate, it is seen that the appellant attained majority in the year 1995; but he has chosen to submit application only in the year 2006. Though there is a statutory provision

for claiming and granting appointment in the dying in harness scheme, under Rule 9A of Chapter XXIVA of KER, it does not mean that appointment can be claimed or granted at any time. In this case, 35 years elapsed from the date of death of the appellant's father. Even though there is a statutory provision i.e. Rule 9A of Chapter XXIVA of KER, which provides for appointment to dependents of non-teaching staff of aided Schools, appellant cannot claim the same at any time. The purpose of such a provision is to provide a solace to the family which is in penury on account of sudden loss of the breadwinner. It cannot be said that appointment claimed can be processed at this distance of time. Learned counsel for the appellant relied on the judgment in Unnikrishnan v. Manager, C.A.H.S. [2010 (1) KLT 354] and contended that the Manager has got a statutory duty to give employment to the dependent of the teacher/non-teaching staff died while in service. But we find that the said judgment no longer holds the field after the Apex Court rendered the judgment in Shreejith v. Deputy Director of Education [2012(3) KLT 214]. This Court had, in Deepak v. Secretary,

General Education Department [2002(3) KLT 388], while considering a case where the application for appointment under Rule 51B of chapter XIVA KER was made on 5.1.1999 where the teacher died on 7.2.1978, after discussing provisions contained in KER relating to compassionate appointment and a large number of judgments of the Apex Court and this Court relating to compassionate appointment till that time, held as follows:

"6. xxxxxxxx

We are of the view if an application is made for compassionate appointment, there must be some proximity between the date of death as well as the date of application. The object of compassionate appointment, as the Apex Court observed, is to tide over the sudden financial crisis resulting due to the death of the bread-earner. It is not as if on the death of an employee, claim of the dependant is kept open for ever. Once a dependant is not always a dependant. There cannot be reservation of vacancy till such time the applicant becomes major or till such time the applicant acquires qualification. We may indicate provision like R. 51B and other Government orders pertaining to compassionate appointment are all made on humanitarian consideration. It is always in the

nature of an exception to the general provision. Exception cannot always occupy the place of the main provision and thereby nullify or dilute the efficacy of the main provision by denuding the right conferred by the main provision to persons otherwise eligible.

XXXX XXXX XXXX

As far as the present case is concerned, evidently application has been made after a period of twenty-one years after the death of the mother of the applicant. We may indicate there is no proximity with the date of the death of the mother and the date of application made by the dependant applicant. It is difficult to believe that the applicant, even if he was a dependant, has not got over the arduous situation even after a period of twenty-one years ago."

5. The very same view was reiterated in General Manager, Corporate Educational Agency of Disalced v. State of Kerala and Ors [ILR 2007 (3) Ker. 361] and several other cases. Above all, the Apex Court in Shreejith's case (supra) considered a batch of appeals relating to compassionate appointment under Rule 51B of chapter XIVA as well as rule 9A of Chapter XXIVA of KER and held as follows:

"It is not in dispute that respondent No.1 had attained majority on the 8th of May, 1995 whereas the application for compassionate appointment was made on 10th September, 2007. This application was, on the face of it, beyond the period stipulated in the scheme for making such a claim. The High Court appears to have confused an application required to be filed within the period stipulated for the purpose with the availability of a vacancy against which such an application could be considered by the Manager. These were two distinctly different matters. What was important was the making of an application for appointment on compassionate basis within the period stipulated for the purpose. Whether or not a vacancy is available had nothing to do with the making of the application itself. An application could and indeed ought to have been made by respondent No.1 within the time stipulated, regardless whether there was a vacancy already available or likely to become available in the near or distant future. Respondent No.1 having failed to do that, could not claim a compassionate appointment especially when there was nothing on record to suggest that the family was in penury notwithstanding the lapse of a considerable period since the demise of the bread-winner; during which period respondent No.1 had got married and settled down in life and supports a family. The High Court was in that view clearly in error in issuing a mandamus to the Manager to appoint the respondent on compassionate basis which order

calls for interference and is hereby reversed."

Therefore, we are unable to accept the contentions raised by the appellant.

In the above circumstances, we do not find any reason to interfere with the judgment of the learned single Judge. Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

k kb.