

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 9956 of 2005 (I)

PETITIONER:

SAJITH KUMAR, S/O. LATE G/155057 K PNR
PONNAPPAN, CHENANTHU HOUSE, POST CHIGOLI
DIST ALLEPPEY (KERALA).

BY ADVS. SRI. R. RAJASEKHARAN PILLAI
SMT. SABINA JAYAN

RESPONDENT(S):

1. THE UNION OF INDIA REPRESENTED BY
THE SECRETARY, MINISTRY OF ROADS AND HIGHWAYS, BRDB
B WING 4TH FLOOR, KASHMIR HOUSE, DHQ P.O.
NEW DELHI-110011.
2. THE DIRECTOR GENERAL BORDER ROADS,
SEEMA SADAK BHAVAN, RING ROAD, DELHI CANTT
NEW DELHI 110010.
3. THE COMMANDANT, GREF CENTRE,
DIGHI CAMP, PUNE-15.
4. HQ CE (P) SEWAK,
C/O. 99 APO.
5. THE COMMANDER, HQ 25 BRTF C/O. 99 APO.
6. THE OFFICER COMMANDING 1634 PNR COY
(GREF) C/O. 99 APO.

BY ADV. SRI. N. NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C)No.9956/05

PETITIONER'S EXTS:

- EXT.P1: COPY OF LETTER NO.512/155057-K/E512 JAN 1994 FROM THE 6TH RESPONDENT TO THE PETITIONER'S MOTHER.
- EXT.P2: COPY OF LETTER FROM THE 3RD RESPONDENT TO THE PETITIONER'S MOTHER.
- EXT.P3: COPY OF LR.NO.147/105/E1 DT.11.5.2000 FROM THE 6TH RESPONDENT TO THE 3RD RESPONDENT.
- EXT.P4: COPY OF LR.NO.1456/7/53/EIR DT.17.5.2000 FROM THE 3RD RESPONDENT TO THE PETITIONER'S MOTHER.
- EXT.P5: COPY OF LETTER NO.1456/07/2/EIR DT.1.11.2001 FROM THE 3RD RESPONDENT TO THE PETITIONER'S MOTHER.
- EXT.P6: COPY OF LR.NO.1456/07/12/EIR DT.22.11.2001 FROM THE 3RD RESPONDENT TO THE PETITIONER'S MOTHER.
- EXT.P7: COPY OF LR.NO.1456/D7/07/EIR DT.3.9.02 FROM THE 3RD RESPONDENT.
- EXT.P8: COPY OF OFFICE MEMORANDUM NO.14014/19/2002-ESTT(D) DT.5.5.2003 OF THE GOVT. OF INDIA.

RESPONDENTS' EXTS:

- EXT.R3(A): COPY OF LETTER DT.27.4.2000 TO THE 3RD RESPONDENT.
- EXT.R3(B): COPY OF COVERING LETTER DT.28.8.2000 ISSUED BY THE MOTHER OF THE PETITIONER TO THE 3RD RESPONDENT.
- EXT.R3(C): COPY OF COMPASSIONATE APPOINTMENT SCHEME VIDE DOP & TOM NO.14014/06/94 DT.9.10.98.
- EXT.R3(D): COPY OF COMPASSIONATE APPOINTMENT SCHEME VIDE DOP & TOM NO.14014/06/94 DT.3.12.99.
- EXT.R3(E): COPY OF LETTER DT.8.7.02 ISSUED BY THE 2ND RESPONDENT.

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

W.P.(C)No.9956 OF 2005

DATED THIS THE 21st DAY OF JULY, 2015

JUDGMENT

The petitioner's father late Ponnappan was employed in the General Reserve Engineering Force (GREF) as a Pioneer. He died in harness on 12.1.1994 while actually performing his duties in the snow-clad mountains of Himalayas, where he was then engaged under the 4th respondent. Late Ponnappan was survived by his wife, son and mother. On 12.1.1994, the petitioner's mother was informed by Ext.P1 that, Ponnappan died in the Military Hospital, due to liver failure. Later, by Ext.P2, a financial assistance to the tune of ₹2,500/- was extended to the petitioner's mother and she was also informed that, there is provision for compassionate employment to a male dependent of deceased (who may be son or nearest relative) in the Group "C" or "D" posts in GREF, as a measure of immediate relief to the family, provided there is no other earning member in the family as a dependent. She was also informed that, in case she is keen to sponsor a male member of her family for considering him for employment in the GREF, an

application form may be obtained from Commander of the GREF Centre.

2. In the year 2000, the petitioner's mother submitted an application for appointment on compassionate ground, which was forwarded by the 6th respondent along with Ext.P3 covering letter to the 3rd respondent. By Ext.P4 letter dated 13.5.2000, the 3rd respondent has informed the petitioner's mother that, for getting appointment on compassionate ground, age of her son should be between 18 to 27, if he has passed 8th standard and should be between 18 to 30 years, if he is a metric (10th) and above). On the petitioner attaining the age of majority, the petitioner's mother submitted an application for compassionate appointment, which was acknowledged by the 3rd respondent by Ext.P5 communication dated 1.11.2001. The petitioner's mother was also informed that, it would take about 6 to 12 months to process the application. Ext.P5 was followed by Ext.P6 communication dated 22.11.2001 informing her that, the application for compassionate appointment is under consideration and the whole process will require 8 to 18 months' time. It was thereafter, she was issued with Ext.P7 communication stating that, as per the

revised policy/Government orders, compassionate appointments are to be considered within one year from the date of death. In the case of the petitioner, his father died on 12.1.1994 and the application was made after a lapse of 6 years and 5 months. Therefore, it was informed that, the petitioner's case will not come under the scheme for compassionate appointment and hence it cannot be progressed. However, in Ext.P7, it was suggested that the petitioner can apply as a 'SON CASE' for suitable post based on his qualification, as and when vacancies are published by the Department in Employment News/Rozgar Samachar. It is aggrieved by Ext.P7 communication issued by the 3rd respondent, the petitioner is before this Court in this Writ Petition, seeking a writ of certiorari to quash Ext.P7 and also seeking a writ of mandamus commanding the 1st respondent to consider his claim for compassionate appointment anywhere in the territory of India in any Group 'C' or 'D' post, as expeditiously as possible.

3. In the Writ Petition, the specific case of the petitioner is that his father was the only person to financially support the family financially and after his death, the financial stability of the

family is vulnerable and deplorable and hence the petitioner is entitled for employment assistance. The petitioner has also produced Ext.P8 Office Memorandum dated 5.5.2003 in which it has been decided that if compassionate appointment in genuine and deserving cases as per the guidelines contained in the above official memorandum is not possible in the first year due to non-availability of regular vacancy, the prescribed committee may review such cases to evaluate the financial condition of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year. It is also provided that the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and second year. After three years, if compassionate appointment is not possible to be offered

to the applicant, his case will be finally closed and will not be considered again.

4. A counter affidavit has been filed on behalf of the respondents in which it has been contended, inter alia, that the claim for compassionate appointment made by the petitioner was rejected since he does not fall within the revised policy and the same was informed vide Ext.P7 communication. The respondents would contend that on 27.4.2000, the petitioner's mother sent Ext.R3(a) letter to the 3rd respondent stating that, at the time of death of her husband, the petitioner was a minor, so that he could not approach the respondent for compassionate employment. Now he has attained the age of 18 years and his case may be considered for appointment. On receipt of Ext.R3(a) letter, the prescribed form along with Ext.P4 was sent to the mother of the petitioner for completion and for submitting it to the 3rd respondent. She was also informed that, at the time of submitting the application, the dependent should be aged 18 to 27 years, if he has passed 8th standard and if he has passed 10th standard (metric), he should be between 18 to 30 years. The petitioner's mother resubmitted the application in the prescribed

form along with Ext.R3(b) covering letter dated 28.8.2000. The application submitted in the prescribed form was forwarded and processed through departmental channels. Even though the case was recommended by the Board of Officers, sanction for further processing was required from the higher authorities, since the case of the petitioner was more than six years old. Accordingly, the details of the processing of the application was intimated to the petitioner's mother.

5. The respondents would also contend that, in the light of the various judgments of the Apex Court on the question of compassionate appointment Exts.R3(c) and R3(d) office memorandums were issued. Subsequently, in Ext.R3(e) letter, the scheme for appointment was clarified by the 2nd respondent. Relying on Exts.R3(c), R3(d) and R3(e), the respondents would contend that the candidature for compassionate appointment has to be considered on a proper application within one year from the date of death/medically boarded out of the Government service. As per Ext.R3(d), the candidature for compassionate appointment has to be considered within one year from the date of death of the Government servant and also within the ceiling limit of 5%

direct recruitment quota provided, vacancies meant for appointment on compassionate ground exist. Because of the ceiling of 5% of the direct recruitment quota for making appointment on compassionate grounds, the number of vacancies are limited. As per Clause 8(b) of Ext.R3(c), the period that has to be reckoned for compassionate appointment is with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration. Thus according to the respondents, the request for compassionate appointment on behalf of the petitioner is belated. The main contention raised in the counter affidavit filed on behalf of the respondent is that, the claim made by the petitioner is highly belated and the same cannot be entertained going by the guidelines governing the field.

6. I heard arguments of the learned counsel for the petitioner and also the learned Assistant Solicitor General of India appearing for the respondents.

7. The sole issue that arises for consideration is as to the legality or otherwise of Ext.P7 order passed by the 3rd respondent, by which the claim for compassionate appointment

made by the petitioner was declined stating that the claim is highly belated.

8. The fact that the petitioner attained majority only in the year 2000 and immediately thereafter his mother made an application is not in dispute. A reading of Ext.P2 would make it explicitly clear that, going by the Scheme of Compassionate Appointment, the petitioner's mother can only sponsor a male member of the family for compassionate appointment. The only male member in the family of late Ponnappan was the petitioner herein. He attained majority only in the year 2000 and it was immediately thereafter an application was submitted before the 3rd respondent seeking appointment on compassionate ground. The said application was ultimately rejected by Ext.P7 order stating that it is highly belated.

9. It is not in dispute that, the scheme for compassionate appointment envisaged by the 1st respondent provides appointment only to a male member of the family of the deceased employee. Admittedly, such an application was made immediately on the petitioner who is the sole male member of that family attained majority. The Scheme for compassionate

appointment envisaged in Ext.R3(c) Office Memorandum dated 9.10.1998 also takes within its sweep belated application for compassionate appointment. Para.8 of Ext.R3(c) O.M. reads thus:

"8. BELATED REQUESTS FOR COMPASSIONATE APPOINTMENT:

- (a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned.
- (b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration."

Therefore, a reading of Clause (a) of Para.8 of Ext.R3(c) would make it clear that in appropriate cases, an application can be entertained even after five years or more and it is not a strict rule of procedure that a belated application can never be accepted. Clause (a) of Para.8 of Ext.R3(c) is not seen modified in any manner either in Ext.R3(d) or in Ext.R3(e). Therefore, the question whether a belated application can be entertained or not has to be decided taking into account the relevant criteria as to whether bereaved family is still facing financial difficulties on account of the death of its sole bread winner. If that be so, the stand taken by the 3rd respondent in Ext.P7 that, application for compassionate appointment can be considered only within one year from the date of death and as such the petitioner's application is a belated one which cannot be entertained, is unsustainable. Therefore, Ext.P7 order passed by the 3rd respondent is set aside and competent among the respondents is directed to consider as to whether the application for compassionate appointment made by the petitioner can be entertained under Clause (a) of Para.8 of the Scheme enclosed to Ext.R3(c) Office Memorandum and pass appropriate orders

thereon, in accordance with law. If it is found that the aforesaid application can be entertained under Clause (a) of Para.8 of the scheme enclosed to Ext.R3(a) Office Memorandum, the competent among the respondents shall consider the application on merits and pass appropriate orders thereon, after assessing whether the bereaved family is still facing financial difficulties on account of the death of its sole bread winner. Such orders shall be passed within a period of four months from the date of receipt of a certified copy of this judgment.

The Writ Petition is disposed of as above.

No order as to costs.

Sd/-
ANIL K.NARENDRA, JUDGE

dsn