



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2016

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

W.A. (MD) No.34 of 2013

M.Pandi ... Appellant / Petitioner

-vs-

The Deputy Registrar of
Co-operative Societies
Madurai Range, Madurai

... Respondent / Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 28.08.2012, made in W.P.(MD) No.10499 of 2012.

Prayer in WP(MD). 10499/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, call for the records relating to the impugned order bearing Na.Ka.No.4505/06/P.Tho. dated 11-04-2008 passed by the Respondent herein and quash the same and consequently direct the Respondent to consider the Petitioner for appointment on the basis of Compassionate Ground.

For Appellant : Mr.K.Samidurai

For Respondent: Mr.A.K.Baskara Pandian
Special Government Pleader

J U D G M E N T

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The appellant is the son of Late.Muniyandi, who was employed as an Office Assistant in the Office of the Sales Officer, Madurai District Central Co-operative Bank, which comes under the control of the respondent herein and died on harness on 01.10.2001, leaving behind the legal heirs viz., the appellant, his mother, paternal grandmother, two sisters and one brother. Appellant's mother obtained a Legal Heirship Certificate from the office of the Tahsildar, Tirumangalam, on 15.10.2001, which would indicate that his mother Angammal was aged about 38 years and he was aged about 16 years at the relevant point of time. According to the appellant, he belongs to Scheduled Caste Community and though his



father died on 01.10.2001, application for compassionate ground appointment could not be sent immediately for the reasons that he was minor at the relevant point of time, there was a ban on recruitment and after the ban period is over, his mother submitted an application, on 05.06.2006, seeking appointment on compassionate ground for him. The respondent, on receipt of the application, called upon his mother to submit Death and Legal Heirship Certificate, Certificate regarding Income issued by the Tahsildar, Affidavit, School Transfer Certificate and Community Certificate. According to the appellant, he has complied with all the required formalities. However, the respondent, vide order, dated 11.04.2008, rejected his application on the ground that the said application was submitted after expiry of three years from the date of demise of the appellant's father. Challenging the legality of the same, he filed a writ petition in W.P.(MD) No.10499 of 2012 before this Court and when the matter came up for hearing, the Single Bench of this Court had formulated a question as to whether the application was belated or not? and, whether the appellant can claim right of compassionate appointment as a matter of right after lapse of so many years. The Single Bench of this Court, after taken note of the decisions rendered by the Hon'ble Supreme Court as well as the orders passed by this Court, found that the application for appointment on compassionate ground after eleven years of demise of the employee, cannot be directed to be considered by the respondent and dismissed the writ petition vide order, dated 28.08.2012. Aggrieved by the same, he has preferred this writ appeal.

2. Mr.K.Samidurai, learned counsel appearing for the appellant, would contend that the father of the appellant died on 01.10.2001 and at that time the appellant was aged about 16 years and there was a ban on recruitment and hence he was not able to submit application and his mother and sister, who were aged about 38 years and 18 years respectively, had given no objection to the appellant for seeking appointment on compassionate ground and immediately after lifting out of the ban on recruitment, his mother submitted an application, on 05.06.2006, before the respondent and on receipt of the same, the respondent called for certain documents and subsequently all the required formalities have been complied with. However, the respondent vide order, dated 11.04.2008, rejected the appellant's application on the ground that it was not submitted within the prescribed period of three years from the date of demise of his father.

3. The learned counsel for the appellant assailed the order of rejection passed by the respondent on the ground that the application could not be made within three years from the date of demise of the appellant's father for the reason that he was minor at the relevant point of time and after attaining the age of majority he could do so. Further, there was a ban on recruitment and after lifting out the ban, his mother submitted the application. But, the said vital facts have been completely



overlooked by the respondent.

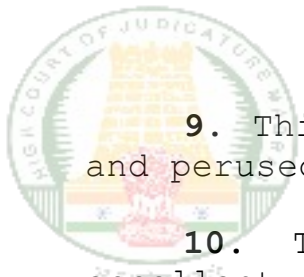
4. The learned counsel for the appellant has also contended that the Single Bench of this Court, without adverting to the said factual aspect, has erroneously held that the request of the appellant for appointment on compassionate ground cannot be considered after 11 years from the date of death of his father

5. Further, the learned counsel for the appellant drawn the attention of this Court to the typed set of documents and submitted that the office of the Tahsildar, Tirumangalam, has also issued an Indigency Certificate, dated 16.10.2006, stating that the family of the appellant did not possess any immovable property and except the salary earned by his father, his family do not have any other income and therefore the appellant has made out a case for appointment on compassionate ground and prays for setting aside the order passed by the Single Bench of this Court.

6. Per contra, Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondent, would contend that the appellant's father died on 01.10.2001 and he was aged about 16 years at the relevant point of time and nothing prevented him from submitting application for appointment on compassionate ground and even for the sake of argument, though there was a ban on recruitment, nothing prevented either the appellant or his mother from submitting application for compassionate ground appointment and after a period of more than three years, his mother submitted the application on 05.06.2006.

7. Further, the learned Special Government Pleader would contend that though the order of rejection came to be passed as early as on 11.04.2008, the writ petition in W.P.(MD) No.10499 of 2012 was filed during 2012 nearly after a period of four years and on that ground also the relief sought for by the appellant cannot be granted and further the learned Special Government Pleader would submit that the Single Bench of this Court has taken note of all the factual as well as legal aspects and rightly came to the conclusion to dismiss the writ petition filed by the appellant and therefore the order, dated 28.08.2016, passed by the Single Bench of this Court does not warrant interference of this Court.

8. In response to the said submissions, the learned counsel for the appellant invited the attention of this Court to the decision in **J.Bhuvankumar v. Commissioner**, reported in **(2014) 6 MLJ 228** and submitted that the appellant herein has scrupulously complied with G.O.Ms.No.155, Labour and Employment, dated 16.07.1993, by producing Indigency Certificate issued by the Tahsildar, Tirumangalam and therefore his request ought to have been favorably considered.



9. This Court has carefully considered the rival submissions and perused the materials produced.

10. The appellant's father died on 01.10.2001 and the appellant was aged about 16 years at the relevant point of time as per the Legal Heirship Certificate, dated 15.10.2001, issued by the Tahsildar, Tirumangalam. The appellant had attained the age of majority during 2003. The explanation offered for the delay in submitting application for appointment on compassionate ground is there was ban on recruitment. As rightly contended by the learned Special Government Pleader, though there was ban on recruitment, nothing prevented the appellant from applying for compassionate ground appointment.

11. The primordial question arises for consideration is whether the application for appointment on compassionate ground is to be favourably considered even after the lapse of very many years from the date of death of the applicant's father / mother.

12. The Full Bench of Allahabad High Court in **Shiv Kumar Dubey v. State of U.P.**, reported in **AIR 2015 Allahabad 47**, has elaborately considered the issue regarding minors seeking appointment on compassionate ground. The Full Bench of Allahabad High Court has taken note of catena of Judgments rendered by the Apex Court and observed that compassionate ground appointment is in the nature of an exception to the ordinary norm of allowing equality of opportunity to every eligible person to compete for public employment and to tide over the sudden financial crisis. The Full Bench of Allahabad High Court has also taken note of the decisions rendered by the Hon'ble Supreme Court in **Commissioner of Public Instructions & Ors. v. K.R.Vishwanath**, reported in **(2005) 7 SCC 206 : AIR 2005 SC 3275**, and **Sushma Gosain & Ors. v. Union of India & Ors.**, reported in **(1989) 4 SCC 468 : AIR 1989 SC 1976**, wherein it is observed that:

"The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit."

13. The Full Bench of Allahabad High Court has also taken note of the decision in **V.Shivamurthy v. State of Andhra Pradesh & Ors.**, reported in **(2008) 13 SCC 730 : AIR 2008 SC (Supp) 488**, wherein the Apex Court has formulated the following principles for



the appointment on compassionate ground:

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are a well recognized exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are:

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, through less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of the family of the employee concerned, that is, spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, Classes III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts"

14. The Full Bench of Allahabad High Court, after surveying and considering various Judgments, has formulated the following principles, which must govern compassionate appointment in pursuance of Dying in Harness Rules:

"(i) A provision for compassionate appointment in an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic



object and purpose which is sought to be achieved.

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) 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 received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death



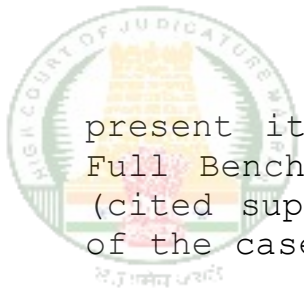
would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.

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15. This Court, keeping in mind the ratio laid down in the above cited Judgments, has carefully scanned through the materials produced and also considered the submissions of the learned counsels on either side. In the light of the decisions rendered by the Hon'ble Supreme Court in **Sushma Gosain** (cited supra) and **K.R.Vishwanath** (cited supra), this Court is of the view that minority of the applicant at the time of death of his / her father / mother is no ground unless the scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he / she can be appointed without any time consciousness or limit.

16. The analysis and consideration of the facts projected before this Court would clearly reveal that the appellant had attained the age of majority during 2003 and the application for appointment on compassionate ground was submitted by his mother on 05.06.2006 and the respondent had rejected the same on 11.04.2008. The fact to be kept in mind while dealing with application for compassionate ground appointment is that it is to give succor to the family to tide over the sudden financial crisis be-fallen the dependents on account of the untimely demise of its sole earning member. But, the present case on hand does not disclose as to how the appellant's family survived for so long years. Further, it is not the case as if the appellant is the only legal heir and the Legal Heirship Certificate issued by the Tahsildar, Tirumangalam, dated 15.10.2001, also would disclose that at the time of demise of the appellant's father, his mother was aged about 38 years and his sister was aged about 18 years and it was open to them to submit application for compassionate appointment, but it was not done so. No doubt, the Indigency Certificate issued by the Tahsildar, Tirumangalam, dated 16.10.2006, would disclose that the income of the appellant's family at the relevant point of time was Rs.37,332/- per annum and they did not possess any immovable property. But, the fact remains that they have been able to survive so long years and despite the fact that the order of rejection was passed by the respondent on 11.04.2008, the writ petition, challenging the same, was filed only on 05.07.2012, nearly after four years and therefore, there was a delay all along in seeking compassionate ground appointment.

17. Further, insofar as the decision in **Bhuvankumar** (supra) cited by the learned counsel for the appellant is concerned, the facts of the said case would disclose that the application for compassionate ground appointment was submitted in time, but in the



present it is not so, and hence in the light of the subsequent Full Bench Judgment of Allahabad High Court in **Shiv Kumar Dubey** (cited supra), the said decision has no application to the facts of the case on hand.

18. This Court, considering the nature and purpose of compassionate ground appointment, is of the view that the appellant has failed to make out a case in respect of his claim and the Single Bench of this Court, on correct application of law, has also held so. This Court, on an independent application of mind to the entire materials produced, is of the view that there is no error apparent or infirmity in the order passed by the Single Bench of this Court and it does not warrant interference of this Court and therefore the writ appeal deserves for dismissal.

19. In the result, the writ appeal is dismissed confirming the order, dated 28.08.2012, passed in W.P.(MD) No.10499 of 2012. However, in the circumstances, there is no order as to costs.

sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

krk

To:

The Deputy Registrar of
Co-operative Societies,
Madurai Range, Madurai.

+1 cc to Mr.K.Samidurai, Advocate SR.No.5211

+1 cc to The Special Government Pleader in SR.No.51976

CSL/SS2/26.09.2016:8P/4C

W.A. (MD) No.34 of 2013
09.09.2016