

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.6856 of 2017
and
W.M.P.Nos.7432 & 7433 of 2017

K.Mathiyalagan

... Petitioner

.Vs.

The Director of Medical Education,
Office of the Director of Medical
Education, Kilpauk,
Chennai-600 010.

...Respondent

Prayer : Petition filed Under Article 226 of the Constitution of India to issue of Writ of certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in Ref.No.26980/E2/4/2012 dated 20.08.2015 and quash the same and consequently direct the respondent to consider the petitioner's application for appointment on the compassionate grounds in any one of the available post in the respondent office, as suitable for the qualification of the petitioner, who has passed plus 2 exam pursuant to the notification dated 29.07.2015 having Reference No.21995/NL.2/4/2014 passed by the office of the Respondent.

For Petitioner : Mrs. Nalini Chidambaram,
Senior counsel for M/S.C.Uma

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

O R D E R

The order of rejection, rejecting the claim of the writ petitioner for compassionate appointment dated 20.08.2015 is under challenge.

2.The father of the writ petitioner late Karuppasamy was working as a Waterman in the Annal Gandhi Memorial Government Hospital, Trichy and passed away on 12.01.1984, while he was in service. On account of the sudden demise of the father of the writ petitioner and due to the indigent circumstances prevailed at that point of time, the mother of the writ petitioner submitted an application seeking appointment on compassionate grounds.

3.Pursuant to that, the mother of the writ petitioner was appointed as a Sweeper in Government Rajaji Tuberculosis on 19.09.1984 but, her services were not regularized in the post of Sweeper. Even before the regularization of service, the mother of the writ petitioner was also passed away on 04.05.1985. During that point of time the writ petitioner was aged about two and a half years and he was brought up by his grand parents. The grandfather was also a mason. With a meager income, he struggled to maintain his family as well as the grand children.

4.The learned Senior counsel appearing on behalf of the writ petitioner contended that the indigent circumstances continues even today. In respect of the writ petitioner's family is concerned, he made an application seeking compassionate appointment on 31.01.2000 and the same was initially rejected and he filed the writ petition before this Court in W.P.No.636 of 2010 and the Madurai Bench of Madras High Court had passed a final order on 29.03.2012, allowing the writ petition and the matter was remitted back to the first respondent for fresh consideration.

5.Pursuant to the orders passed by the Madurai Bench of Madras High Court, the impugned order was passed on 20.08.2015. The reasons stipulated in the impugned orders are that the indigent circumstances is not prevailing in the family of the writ petitioner, since they are able to lead the family for more than 32 years. Further, the application seeking compassionate appointment cannot be considered after 3 years from the date of the death of the Government employee and considering these aspects, the order of rejection impugned in this writ petition is issued.

6.This Court has considered the scope of compassionate appointment in earlier writ petitions as below:

"3. This Court considered the arguments advanced by the learned counsel for the writ petitioner that, India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavour for promoting the welfare of the people by securing

and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment opportunities to the members of the family of the deceased Government servants has arisen.

4. A Government servant is expected to give his full time attention and energy and render his very best of attention for securing faithful implementation of various schemes and welfare measures brought in place by the State Government, he is termed as a round the clock servant of the State and he should devote and dedicate himself for providing good quality services to the citizens. Should, unfortunately, any such employee die in harness, his family members cannot be left behind in distressful conditions, unattended to and uncared for. With the sudden departure of a breadwinner, we should be alive to the fact that most of the Indian families lose the very source of their sustenance. It is not at all difficult for us to imagine that inspite of rapid strides of progress, the country has been making in all Sectors, still there are several lakhs of families having a single breadwinner and on an average 4 or 5 hungry persons depend on him for their sustenance and survival. In such a scenario, if that breadwinner vanish suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. His savings would be hardly enough to see them through the next couple of months, at best. During the best days of a man, he might have contributed meaningfully, given the fact that whatever marginally that would make a difference to the State Services and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them.

5. Apart from the civil servant enjoying the status as such, upon his death, if his family members who are surviving are not to be taken care of by the State, the prospects are such that a negative image can be spread in the Society that the State never bothers for the well being of the dependents of the

Government servants. It is to avoid any such negative image gaining ground, the State Government as a socio welfare measure, has put in place a mechanism for providing employment to one of the eligible dependents of the family of the deceased Government servant. Several meaningful conditions are attached to be complied with before hand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be thrown open to competition for one and all. All members who are eligible to be so recruited should be permitted to compete and the best amongst them found suitable can alone get employment. Therefore, an exception is sought to be carved out from this constitutionally assured mechanism of filling up public employment while providing for making appointments on compassionate grounds. Possibly, conditions can be stipulated such as that at the time of death, the left over service of the deceased employee before he attains the age of superannuation should not be less than a reasonable period, say three years or at best five years. Similarly, a stipulation that appointment on compassionate grounds should be claimed as quickly as possible after the death of the civil servant, a duration in this regard can be prescribed not to exceed by a reasonable length of time of say three years or at best five years. If the surviving members of the civil servant who died with the hardships of life, can get along and carry on their show for considerable length of time after the departure of the breadwinner by far in a reasonable manner, interference can be drawn from that the family of the deceased civil servant is able to feed for itself, notwithstanding the loss of the breadwinner. The period of endurance of such a family holds out an assurance that the family has got over the trauma caused by the departure of the breadwinner, but, it has the social resources to carry on with the show in his absence as well.

6. In these set of circumstances, the State Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

7. When we keep these factors in mind and also in view of the fact that making appointments on compassionate grounds is not one of the identified/marked sources of recruitment to civil service -- rather it is an exception to the normal constitutional norm of allowing all people to contest and compete-appointments on compassionate grounds cannot be made after long years have gone by, from the date of the death of the civil servant.

7. This apart, the Hon'ble Division Bench of this Court also in the case of Inspector General of Prisons Vs. P.Marimuthu reported in (2016) (5) CTC 125. The Hon'ble Division Bench considered all the aspects of the matter and held as under:

"35. With due respect, decisions made in V.Jaya's Case and J.Jeba Mary's Case, cannot be considered to be precedents, on the specific issue, as to whether, a minor is eligible to seek for Employment Assistance on Compassionate grounds, on attaining majority, after a long number of years, after the death of the Government Servant, de hors the condition that it has to be submitted within three years from the date of death of the Government Servant, and when the Scheme of Employment Assistance on Compassionate grounds, is to tide over the financial constraint of the deceased family. The issue to be considered is when the Scheme provides for a limitation or a specific period within which, an Application for Employment Assistance has to be made, and how the said period of three years from the date of death of the Government Servant has to be computed, whether a person, who is otherwise not eligible to apply within the said period, on account of age or not satisfying the required qualifications for any post in the service, in which the Employee died, can make an Application, on attaining majority and whether such Application has to be considered irrespective of the period of limitation? On this aspect, this Court deems fit to consider few decisions of the Hon'ble Apex Court:

(i) In Union of India (UoI) and others v.Bhagwan Singh, 1995 (6) SCC 476, a Senior

Clerk in Railways died on September 12, 1972, leaving behind his wife, two major sons and the Respondent (before the Hon'ble Supreme Court), who was a minor, aged about 12 years. He passed Higher Secondary Examination in 1983. Stating that he had attained majority only in 1980/1981, he sought appointment on Compassionate grounds. The same was rejected. The Authorities took the view that the Application was beyond the period of limitation (five years) and that the case of the Respondent was not covered by the relevant rules, at the time of demise of Ram Singh. Besides, there were two other major sons of the deceased, who did not seek for employment and that the family was not in financial distress. The Central Administrative Tribunal, held that the Order of rejection as unjustified and directed Union of India to reconsider the case of the Respondent therein, if he was otherwise qualified. Testing the correctness of the Order of the Central special concession of Employment Assistance on Compassionate grounds to provide immediate financial assistance to the family of a Government Servant who died in harness, the Hon'ble Supreme Court, at Paragraph No.8 held as follows:

"8. It is evident, that the facts in this case point out, that the plea for Compassionate Employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on September 12, 1972, there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on Compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the Respondent for appointment on Compassionate grounds and to provide him with an appointment, if he is found suitable. We set

aside the Order of the Tribunal dated February 22, 1993. The Appeal is allowed."

(ii) In Haryana State Electricity Board and another v. Hakim Singh, 1997 (3) LLN 783 (SC) : 1997 (8) SCC 85, Haryana Electricity Board challenged an Order of the High Court of Punjab and Haryana contending inter alia that the Respondent therein was not entitled to be considered for appointment in the Board of Compassionate grounds. In the reported case, father of the Respondent therein was a Lineman in employment of the Board. He died on 24.08.1974 in harness, leaving behind him, his widow and minor children, including the Respondent. About 14 years, after the death of the said Lineman, widow applied for appointment to her son in the Board, on compassionate grounds, based on two Circulars. As per the said Circulars, one member of the family of the deceased Employee could be considered for employment in the service of the Board, as a goodwill gesture, provided the request for such employment is made within one year of the death of the Employee. The Respondent filed a Writ Petition in the High Court contending inter alia that when his father died, he was only four years old and therefore, his mother could make an Application in the prescribed Form and when he attained majority, he made a request. The Board did not give any favourable response to the repeated Representations made in the matter. The Board took a stand that as the Application was not made within the period specified in the Circulars, the Board was unable to entertain the request for appointment on Compassionate grounds. The High Court ordered the Board to consider the case of the Respondent therein for compassionate Appointment on the ground that, even if the dependents happened to be a minor child, at the time of death of the Employee, the Policy mandates his case to be considered by an extended period ie., the time till the defendant attained majority. The Board's Appeal was negatived by the Hon'ble Division Bench, with a direction to comply with the orders of the Single Judge,

within a time frame. When the correctness of the above said Orders was tested, at Paragraph No.8 of the Judgment, the Hon'ble Supreme Court held as follows:

"8. The Rule of Appointment to Public Service is that they should be on merits and through open invitation. It is the normal route through which one can get into a Public employment. However, as every Rule can have exceptions, there are a few exceptions to the said Rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased Employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to Public employment."

As regards the extended period, on attaining majority, the Hon'ble Supreme Court at Paragraph Nos.14 & 15, held as follows:

"14. In that case widow of a deceased Employee made an Application almost twelve years after the death of her Husband requesting made an Application almost twelve years after the death of her Husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on Compassionate ground. This court upset the said directions of the High Court following two earlier decisions rendered by this Court one in Umesh Kumar Nagpal v. State of Haryana and others., 1994 (3) SCR 893, the other in Jagdish Prasad v. State of Bihar and another., 1996 (1) SCC 301. In the former, a Bench of Two-Judges has pointed out that "the whole object of granting Compassionate Employment is 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 the post held by the deceased". In the latter decision which also was rendered by a Bench of Two Judges, it was observed that "the very object of appointment of dependent of the deceased Employees, who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of earning member of the family". The learned Judges pointed out that if the claim of the dependent which was preferred long after the death of the deceased Employee is to be countenanced it would amount to another mode of recruitment of the dependent of the deceased Government Servant "which cannot be encourage, dehors the Recruitment Rules."

15. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the Respondent as the request was made far beyond the period indicated in the Circular of the Board dated 01.10.1986. Respondent, if he is interested in getting employment in the Board has to pass through the normal route now."

Ultimately, the Hon'ble Supreme Court set aside the impugned Orders of the High Court,

(iii) In Sanjay Kumar v. State of Bihar and Others, 2000 (3) LLN 1072 (SC): 2000 (7) SCC 192, the petitioner was 10 years old, and his mother working as a Excise Constable, died. He made an Application on 02.06.1988, soon after the death of his mother, seeking appointment on Compassionate grounds. The said Application was rejected on 10.12.1996. Fresh Application subsequently made was also rejected on 21.04.1997. Being aggrieved by the same, he preferred a Writ Petition before the High Court. A learned Single Judge dismissed the Writ Petition and that the same was also confirmed by the Hon'ble Division Bench. On Appeal, the Hon'ble Supreme Court, at Paragraph No.3, held as follows:

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of

cases that Compassionate Appointment is intended to enable the family of the deceased Employee to tide over sudden crisis resulting due to death of the bread earner who had left the over sudden crisis resulting due to death of the bread earned who had left the family in penury and without any means of livelihood: In fact such a view has been expressed in the very decision cited by the Petitioner in Director of Education and another v. Pushpendra Kumar and Others (Supra). It is also significant to notice that on the date when the first Application was made by the Petitioner on 02.06.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the Petitioner. There cannot be reservation of a vacancy till such time as the Petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of Compassionate Appointment is to see that the family gets immediate relief."

(iv).In Sushma Gosain v. Union of India, 1989 (4) SCC 468, it was observed that in all the claims of appointment on Compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on Compassionate ground is to mitigate the hardship due to death of the breadwinner 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 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. The above view was reiterated in Phoolwati v. Union of India, 1991 Supp (2) SCC 689: and Union of India vs. Bhagwan Singh, 1996 (1) LLN (SC): 1995 (6) SCC 476.

(v).In Director of Education (Secondary) vs Pushpendra Kumar, 1998 (3) LLN 47 (SC): 1998(5) SCC 192, it was observed that in the 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 the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the

deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment 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 to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provisions to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

(vi). In *Director, Defence Metal Research Laboratory V G.Murali* 2003 (9) SCC 247, the applicant was aged about two years, at the time of death of his father and that his application for compassionate ground appointment made, on attainment of majority was rejected, on the ground of non-availability of posts. The central administrative tribunal rejected the challenge. However, the High Court directed appointment on compassionate grounds. However, the High Court directed appointment on compassionate grounds, with a direction to the respondent's therein to create a post to accommodate him. The civil appeal filed by the Director (Defense) and another, was allowed and at paragraph No.4, the Hon'ble Supreme Court opined as follows:

4. "We do not find any flimsy ground or technicalities in the Tribunal's Order. In fact, we find the High Court's Order to be unsustainable. There has been a failure to appreciate what the Tribunal had rightly taken into account, namely, that the writ petitioner and his family has eoped without the compassionate appointment for about eighteen years. There was no warrant in such circumstances for directing the writ petitioner's appointment on compassionate grounds and that too with the direction to the respondent to the writ petition to create a post to accommodate him."

(vii) In *National Hydroelectric Power Corporation and anr V. Nanak Chand and anr.*, 2005(1) LLN 25 (SC): 20041 (12) SC 487, father

of the respondent was working under Hydro Electric Project of Government of India and died on 10.12.1976. The project was handed over to the Appellant-Corporation in 1978. The Respondent, after attaining majority in 1986 applied for Compassionate Appointment which was rejected on the ground that the Application was made after 10 years and that corporation had surplus staff. Placing reliance on the instructions issued by the Government, contained in Swamy's complete manual and establishment and administration, the High Court granted Order, the Hon'ble Supreme Court, after referring to a catena of decisions held that the impugned Judgment therein, as unsustainable. The Apex Court further held that the fact that the ward was a minor at the time of death of his father, was no ground to grant compassionate ground appointment, unless the scheme itself envisages.

(viii) In State Bank of India vs Somvir Singh, 2007 (4) SCC 778, at paragraphs 7 & 10, the Hon'ble Apex Court held as follows:

7. Article 16(1) of the Constitution of India guarantees to all the citizens equality of opportunity in matter relating to employment or appointment to any office under the state. Article 16(2) protects citizens against discrimination in respect of any employment or office under the state on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis for open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

There is no dispute whatsoever that the appellant bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment

and the right, if any, is traceable only to the scheme, Executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case of be."

The Hon'ble Supreme Court further held that it is well settled that the hardship of the dependent does not entitle one, to compassionate appointment, dehors the scheme or the statutory provisions, as the case may be.

(ix).In S.Venkateswaran vs The Additional Director, Land Survey and Records department, W.P.(MD) No.9086 of 2011, dated 14.09.2011, it is held as follows:

"The principles enunciated in the above said judgments would makes it clear that compassionate appointment is not a vested right which can be exercised at any time, in future. Compassionate employment cannot be claimed after a lapse of time, after the crisis is over. On the facts and circumstances of the above case, the Apex Court proceeded to observe that the employee died in harness in the year 1981 and after a long squabble by the dependents of the deceased, they have arrived at a settlement that the son-in-law (Husband of the second daughter), who was unemployed, may request for appointment on compassionate grounds, subject to the approval of the Director of the company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of dependent of the deceased employee. The supreme Court held that the decision of the employer was in consonance with Umesh Kumar Nagpal's case and the same should not have been interfered with by the High Court.?"

(x).In Local Administration Department vs M.Selvanayagam, 2011(2) LLN 368(SC): 2011 AIR

SCW 2198, an application was made by the son of the deceased, after 7 ½ years, from the date of death of his father, who died as a watchman in Karaikal municipality on 22.11.1988, leaving behind, his wife and two sons, including the respondent therein. At the time of his death, the respondent therein was aged 11 years. After about 5.5 years from the date of his father's death, the respondent therein passed S.S.L.C, examination in April, 1993. Thereafter, for the first time on July 29, 1993, the respondent's mother therein made an application for his appointment on compassionate grounds. No action was taken on the application, since the respondent therein was still a minor. A learned Single Judge directed the authorities to consider his claim for appointment on compassionate grounds, afresh and of passing of the order. As the same was not complied with, a contempt proceeding was initiated. The Municipality rejected the respondent's claim therein, for compassionate appointment. Once again, a writ petition was filed and this time, a learned single Judge rejected the same. The Hon'ble Division Bench, which considered the correctness of the said Order, allowed the writ appeal and that the same was challenged before the Hon'ble Apex Court. After considering the scheme of Employment Assistance on Compassionate grounds, at paragraphs 7 to 9, the Hon'ble Apex Court, held as follows:

"7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganized way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the

sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Article 14 & 16 of the constitution and hence, quite bad and illegal. In dealing with cases of Compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies, etc., normally the appointment may come after several months or even after two or three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

9. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the municipality and he had died while in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the Scheme of Compassionate appointments."

36. In National Institute of Technology vs Niraj Kumar Singh, 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on Daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. After 18 years and therefore, no appointment can be given to the employee's son on Compassionate ground. There were other issues of making a false claim by the grandson. Suo muto Contempt Notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 & 22, the Hon'ble Supreme Court, held as follows:

"21. The appointment on compassionate ground, thus could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri.B.P.Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, purported the appointment on compassionate ground had been give in 2001,i.e., after more than 15 years from the date of death of the said ShriB.P.Sinha.

2.If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practicing fraud upon the appellant, the same was nullity, WE are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. (See Chief Justice of A.P.,vs L.V.A. Dixitulu, 1979 (2) SCC 34: and Union of India vs pramod Gupta (D) by Lrs and ors., 2005 (12) SCC 1)"

37.Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government Order issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to sub serve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the death of the employee, the applicant should an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government Orders issued from time to time, makes it clear and that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government Orders issued from time to time, that the application should be submitted within three

years from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the state, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment Assistance on compassionate appointment, is only for a suitable post, in the service, in which, the Employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the Department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government Orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the Department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor aged about 12 years. Reference can also

be made to a decision made in Sushma Gosain vs Union of India, 1989(4) SCC 468.

41.In the result, the writ appeal is allowed. No costs. Order made in W.P.(MD) No.6538 of 2009 dated 22.04.2014 is set aside. Consequently, connected miscellaneous petition is closed.

8.In view of these principles laid down by this Court and the Hon'ble Division Bench on the scheme of compassionate appointment, no further consideration is required in this writ petition and accordingly, the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. However, there is no order as to costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

smn/kas

To

The Director of Medical Education,
Office of the Director of Medical
Education, Kilpauk,
Chennai-600 010.

+1cc to Mrs.C.Uma, Advocate Sr. 50262

+1cc to the Government Pleader, Sr.50120

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SR(CO)
VR(09/08/2017)