

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2017

CORAM

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

Writ Petition No.14068 of 2017

R.Moovedhan

...Petitioner

Vs.

1. Principal Chief Engineer
Water Resource Department and
Chief Engineer (General)
Public Works Department
Chepauk, Chennai - 600 005.
2. Chief Engineer
Public Works Department
Water Resources
Trichy Division.
3. Executive Engineer
Public Works Department
Vennar Basin Division
Tiruvavur.
4. Assistant Executive Engineer
Public Works Department
Vennar Basin Division
Tiruthuraiipoondi.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari Mandamus to call for records in the impugned order dated 10.4.2017 in Letter No.S5(2)/20821/2014 passed by the 1st respondent, quash the same, further direct the respondents to provide employment to the petitioner on the ground of compassionate appointment without reference to delay.

For Petitioner : Mr.S.P.Sudalaiyandi

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

O R D E R

The order of rejection in Letter No.S5(2)/20821/2014 dated 10.04.2017, is under challenge in this writ petition. The order impugned was issued on the ground that the application seeking compassionate appointment was preferred after a lapse of three years from the date of death of the deceased employee.

2. The learned counsel appearing for the writ petitioner states that the father of the writ petitioner passed away on 01.01.1987 and initially mother of the writ petitioner filed an application on 04.07.1988 and the same was not considered by the respondents. However the writ petitioner submitted his application seeking compassionate appointment on 18.03.2002 and the same was rejected on the ground that the application was not submitted within a period of three years from the date of death of the deceased employee.

3. The learned counsel appearing for the writ petitioner submitted that the Judgment of Supreme Court in the case of Canara Bank & Anr Vs. M.Mahesh Kumar, reported in 2015 AIR SCW 3212. Paragraph 15 of the Judgment is extracted hereunder:-

"15. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependent of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority."

4. In the said case, the point of getting family pension was considered and the Court held that, receiving of family pension is of no consequence in considering the application for compassionate appointment. The scheme of compassionate appointment differs from one employer to another. The case cited above was from a Nationalized Bank. In the case on hand it is the State Government. Thus, there cannot be any comparison, since it is a special scheme. Even then, the Courts

have taken views subsequently by holding that the compassionate appointment being an exception cannot be considered as a regular recruitment process. The scheme cannot pave way to provide appointment in a routine manner. All compassionate appointments are to be made strictly in accordance with the terms and conditions of the scheme and the scope of scheme cannot be extended so as to provide public employment to the legal heirs of the deceased employees. Equal opportunity in public employment is a constitutional mandate and all appointments to the public services is to be made by following the recruitment rules in force. Equal opportunity in employment is an assurance provided under the constitution and by implementing the subject scheme the appointment to public employment cannot be made in a routine manner.

5. The learned counsel further submitted a Judgment in the case of P.Sathiarman Vs. Secretary to Government, Department of Electricity and Others, reported in (2013) 8 MLJ 190. Paragraph 12 of the Judgment is extracted hereunder:-

"By relying upon various decisions of Division Bench and the Hon'ble Supreme Court, the very same issue has been dealt with elaborately by one of us (N.Paul Vasantha Kumar, J.) in the following cases:

1. Mohanambal v. Director, Land and Survey Department, (supra)

2. J.Jeba Mary v. The Chairman, Tamil Nadu Electricity Board, (supra)

3. G.Saravanakumar v. The Chairman, Tamil Nadu Electricity Board, Chennai, 2011 (2) CWC 83: LNIND 2011 MAD 1961

4. R.Prasath v. The Secretary, Labour And Employment Dept., Chennai, W.P.No.3078 of 2006, dated 17.06.2010

5. M.Uma v. The Chief Engineer (Personnel) Chennai, W.P.(MD).No.4050 of 2006, dated 29.06.2010

After analyzing the above said case laws, it was held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who have then not attained majority and subsequently, applied within

three years of their attaining majority, the request could be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond 3 years of death of the father. It is not the case of the respondents that the family of the appellant is not in indigent status as on today."

6. The learned counsel for the petitioner submitted another Judgment passed in W.A.No.1185 of 2014 dated 05.09.2014. Paragraph 4 is extracted here:-

"4. Per contra, the learned counsel for the respondent/writ petitioner, by placing reliance upon the decision in P.Sathiarman vs. Secretary to Government, Department of Electricity and Others, (2013) 8 MLJ 190 and Syed Khadim Hussain vs. State of Bihar and Others, (2006) 9 SCC 195, submitted that inasmuch as the application made by the respondent's mother is pending consideration and taking note of the object and rationale behind the scheme governing the appointment on compassionate ground, the direction issued by the learned Single Judge does not warrant interference."

The Division Bench has considered and relied on the decision passed in the case of P.Sathiarman vs. Secretary to Government, Department of Electricity and Others, (2013) 8 MLJ 190. Thus, no further relevance is required to be considered on the Judgment and further this Judgment is not based on the legal principles of the case in hand.

7. This Court is bound to follow the legal principles and the precedence laid down by the Hon'ble Supreme Court as well as the Division Bench of this Court. Certain orders passed by the Hon'ble Division Bench, considering the factual circumstances of the cases, need not be followed, in view of the fact that the facts are dis-similar and therefore the same cannot be considered. The Judgments delivered on the legal principles by the Hon'ble Supreme Court and the High Courts are to be followed scrupulously by all other Courts. However the orders passed considering the factual circumstances of the case need not be

applied to the other cases and this Court is bound to consider the facts and the circumstances of the particular case independently. Thus Judgments cited by the learned counsel for the petitioner in earlier circumstances are of no avail to the writ petitioner and the latest Judgment passed in the matter of compassionate appointment by the Division Bench, which is supported by various Judgments of the Hon'ble Supreme Court is to be followed by this Court, while considering the facts and the circumstances of the case on hand.

8. This apart, the scope of appointment on compassionate grounds itself is well enumerated in the following Judgments by this Court, which is extracted hereunder:

(i) In Sanjay Kumar vs. State of Bihar and Others {(2000) 7 SCC 192}, wherein the Hon'ble Supreme Court, in paragraph-3 of its judgment, held as under:-

"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 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 2.6.1988, 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."

(ii) In Umesh Kumar Nagpal vs. State of Haryana and Others {(1994) 4 SCC 138}, the Hon'ble Supreme Court, in paragraph 6 of its judgment, held as under:-

"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 bread-winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

(iii) In State of Manipur vs. Md. Rajaodin {(2003) 7 SCC 511}, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments 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 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 envisage 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 re-iterated in Phoolwati (Smt.) vs. Union of India and others (1991) Supp. (2) SCC 689 and Union of India and others vs. Bhagwan Singh (1995 (6) SCC 476). In Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others (1998 (5) SCC 192) it was observed that in 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 dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground 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 provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

(iv) In *Steel Authority of India Limited vs. Madhusudan Das and Others* {(2008) 15 SCC 560}, wherein the Hon'ble Supreme Court, in paragraph 15 of its judgment, held as under:-

"This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. [See *General Manager, State Bank of India and Others vs. Anju Jain* (2008) 8 SCC 475, para 33]"

(v) In *MGB Gramin Bank vs. Chakrawarti Singh* {(2014) 13 SCC 583}, the Hon'ble Supreme Court, in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of its judgment, held as under:-

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

7. In Umesh Kumar Nagpal v State of Haryana & Ors., (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:-

"2. 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.... The exception to the rule made in favour of the family of the deceased employee is in

consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.

4. ... The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

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6. ... The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis....." (Emphasis added)

8. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

10. In *A. Umarani v Registrar, Co-operative Societies & Ors.*, AIR 2004 SC 4504, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

11. The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as:

"vested.----fixed; accrued; settled; absolute; complete. Having the character

or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute "vested rights".

12. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Bibi Sayeeda v State of Bihar AIR 1996 SC 516; and J.S. Yadav v State of Uttar Pradesh (2011) 6 SCC 570)

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldip Singh v Government, NCT Delhi AIR 2006 SC 2652).

14. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India & Anr. vs. Raj Kumar (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending applications.--The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be

dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

(vi) This Court in a judgment in W.P.No. 8773 of 2015 dated 27.07.2017 held as follows:-

" 11. 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.

12. 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 vanishes suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. The savings made by the public servant would be hardly enough to see them through the next six 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 States 'Service and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them, by those servants including the deceased employee'.

13. 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, 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, and it has the necessary social resources to carry on with the show in his absence as well.

14. 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.

15. 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.

16. It may be a different matter if the employee concerned died in service while trying to protect the property of the Court/State Government as the case may be and while trying to save it from any accidental hazards such as fire, flooding, etc., or while trying to save the record or property of the Court/Government from the hands of miscreants who are trying to destroy the same, as those cases, require greater amount of compassion to be shown as the individual concerned has made the highest sacrifice of his own life, for the cause of the State. In such cases, perhaps a longer duration of even ten or fifteen years can be considered as reasonable. Those, who lay down their lives while trying to save/protect the interest of the State Government/Court, stand on a lofty pedestal in comparison to those who met with either natural or self inflicted unnatural death. In no case, the time limit prescribed for entertaining the claims for compassionate appointment should be kept open like in the instant case for more than two decades. Any attempt to entertain any such claim, would convert the scheme of making compassionate appointments into a different form of

hereditary employment. It would also tend to convert the scheme of compassionate appointments into a source of recruitment altogether and both the aforementioned factors are not the pursuits, which should be allowed to be undertaken or encouraged by the State Government and its organs."

(vii) The Hon'ble Division Bench of this Court has considered all the Judgments of the Hon'ble Apex Court in elaborately and laid down the principles in the case of The Inspector General of Prisons vs. P.Marimuthu {2016 (5) CTC 125}, in paragraphs 36 to 41, held as follows:

36. In National Institute of Technology v. Niraj Kumar Singh reported in 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. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 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, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

22. If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a 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., v. L.V.A.Dixitulu, 1979 (2) SCC 34 and Union of India v. 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 orders 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 subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be 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 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 a concession, extended to an eligible member of the family, to apply 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 v. Union of India* reported in 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."

9. In this view of the subsequent Judgments in this regard, no relevance needs to be placed in respect of the earlier order passed by this Court on the peculiar circumstances of the case.

10. Accordingly no consideration needs to be shown on the grounds raised in this writ petition, in view of the fact that the deceased employee died on 01.01.1987 and the writ petitioner submitted his application on 18.03.2002. Now after a lapse of 30 years no appointment on compassionate ground shall be provided to the writ petitioner and in the event of considering such cases for compassionate appointment the equality clause under Article 14 will be violated in respect of other candidates, who are aspiring public employment and waiting to participate in the regular recruitment process. Accordingly writ petition stands dismissed. However no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Principal Chief Engineer
Water Resource Department and
Chief Engineer (General)
Public Works Department
Chepauk, Chennai - 600 005.

2. Chief Engineer
Public Works Department
Water Resources
Trichy Division.

3. Executive Engineer
Public Works Department
Vennar Basin Division
Tiruvavarur.

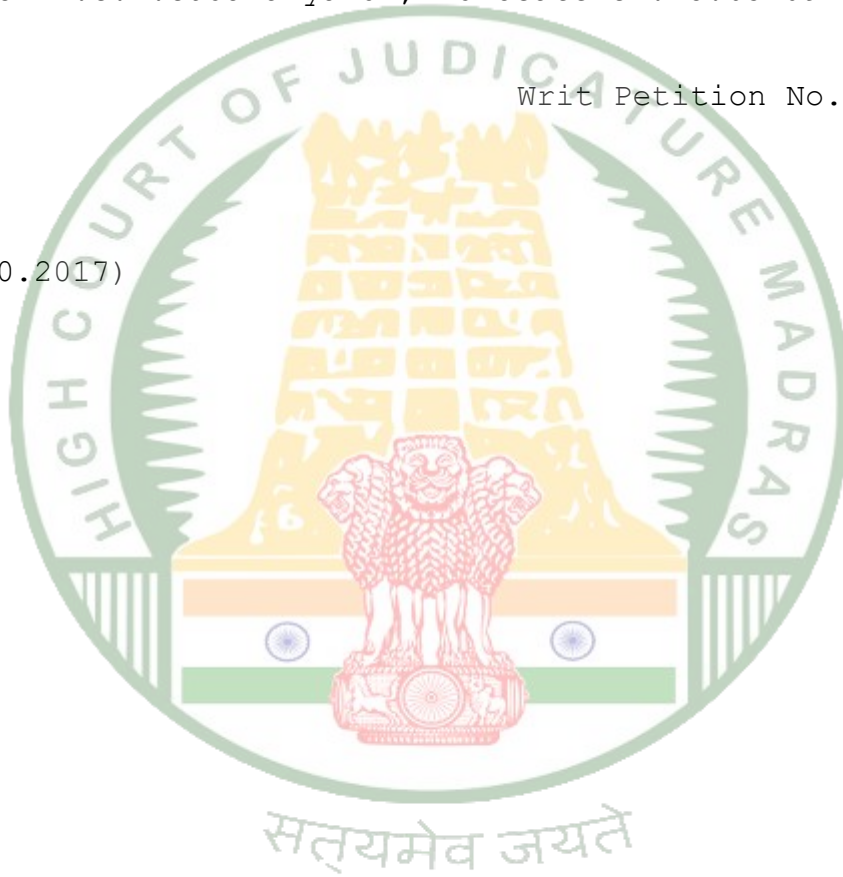
4. Assistant Executive Engineer
Public Works Department
Vennar Basin Division
Tiruthuraipoondi.

+1 CC to Government Pleader, High Court, Chennai Sr.No.63561

+1 CC to Mr.S.P.Sudalaiyandi, Advocate Sr.No.63109

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