



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.A. (MD) No.1243 of 2017

and

C.M.P (MD) No.8666 of 2017

against

W.P (MD) No.10602 of 2014

1. The Government of Tamil Nadu,
represented by its Principal Secretary,
Home Department,
Fort St.George,
Chennai.
 2. The Director General of Police,
Chennai.
 3. The Commissioner of Police,
Madurai City,
Madurai.
- : Appellants/Respondents

.vs.

K.Arun Prasad : Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD) No.10602 of 2014, dated 28.09.2016.

Prayer in WP(MD). 10602/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus, directing the respondents to give compassionate appointment to the petitioner.

For Appellants : Mr.VR.Shanmuganathan
Special Govt.Pleader

For Respondent : Mr.Krishnamoorthy
for Mr.R.Subramanian

**JUDGEMENT**

[Judgement of the Court was made by **M.VENUGOPAL, J.**]

Heard both sides.

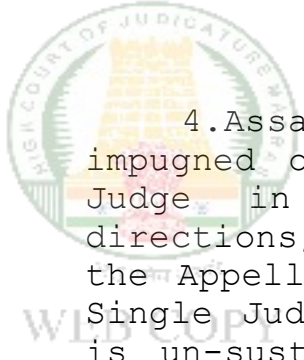
2.The Appellants/Respondents have focussed the instant Writ Appeal before this Court, as aggrieved persons, as against the order, dated 28.09.2016 in W.P(MD)No.10602 of 2014, passed by the Learned Single Judge.

3.The Learned Single Judge while passing the impugned order on 28.09.2016 in W.P(MD)No.10602 of 2014(filed by the Respondent as Petitioner), at paragraphs 2 and 3, had observed the following:

'2.The Petitioner's mother R.Jaya died on 14.09.2008 while in service as Sub-Inspector of Police, Madurai City; the Petitioner's grandmother and sister were dependants upon the Petitioner' the Petitioner's father pre-deceased the Petitioner's mother; on 24.12.2008, the Petitioner applied for appointment on compassionate grounds; the Petitioner's sister also gave consent for the same; by the proceedings dated 01.08.2011, the Inspector of Police, District Special Branch, Madurai District, recommending the case of the Petitioner for compassionate appointment and consequently, the third respondent/Commissioner of Police, Madurai District, has informed the Petitioner that his name has been included in the State-Wide waiting list for compassionate appointment, wherein, the Petitioner has been placed at Serial No.1667.

3.The learned counsel for the Petitioner would submit that even though the seniority list is maintained in accordance with G.O.No.135, Labour and Employment Department, dated 4.10.2006, the Petitioner's case must be considered on priority basis, as maintaining of the seniority list itself runs counter to the basic objective with which compassionate appointment is provided. It is specifically pointed out that the Petitioner has lost both the mother and father and as he is waiting for long number of years, his case must be considered on priority basis.'

and ultimately directed the Appellants/Respondents to consider the Petitioner's case on priority basis considering the stated circumstances and to grant compassionate appointment out of turn forthwith, if otherwise found eligible and disposed of the Writ



4. Assailing the validity, legality and correctness of the impugned order, dated 28.09.2016 passed by the Learned Single Judge in disposing of the Writ Petition with the afore-stated directions, the Learned Special Government Pleader appearing for the Appellants/Respondents submits that the order of the Learned Single Judge passed in W.P(MD)No.10602 of 2014, dated 28.09.2016 is un-sustainable both in law and on facts and the same is liable to be set aside. The Learned Special Government Pleader further submits that the Learned Single Judge should have seen that the request of the Writ Petitioner was not negatived or rejected, but the Respondent/Writ Petitioner was placed in the Seniority List for the compassionate appointment.

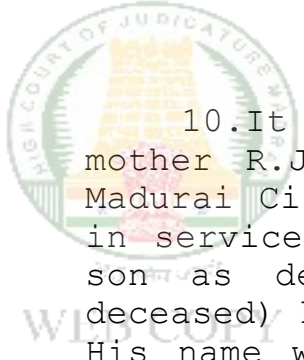
5. The real grievance of the Appellants is that if the Respondent/Writ Petitioner is provided with compassionate appointment out of turn, then it would cause serious prejudice to the other wait-listed candidates and also it will amount to discrimination. The Learned Special Government Pleader draws the attention of this Court that the Learned Single Judge should have seen that as per G.O.(Ms)No.135, Labour and Employment(02) Department, dated 4.10.2006, the Government had decided that the date of death of Government Servant is to be taken in respect of compassionate appointment.

6. Continuing further, it is pointed out on the side of the Appellants that the dependants of the Government Servants who died prior to the Petitioner's mother are still waiting in queue to secure appointments. Furthermore, 'maintenance of Seniority List' is not *per se* illegal.

7. It is to be pointed out that the object of 'compassionate appointment' is to relieve the hardship due to the death of a bread-winner in the family and that the appointment be provided immediately to redeem the family in distress. At the same time, it is to be borne-in-mind that 'compassionate appointment' cannot be construed as opening an alternative mode of recruitment to public employment. Of course, a Court of Law is to make an endeavour whether a particular case in which sympathetic considerations are to be weighed within the ambit of Law.

8. There is a common grievance that applications for 'compassionate appointment' are not expeditiously attended to. In fact, the consideration for 'compassionate appointment' should not brook delay in the considered opinion of this Court.

9. It is to be noted that the rules relating to 'compassionate appointment' may validly create a distinction between death or disability occurring in the course of employment and those which occur outside the course of employment. Such distinction cannot be termed as a discriminatory one.



10. It is not in dispute that the Respondent/petitioner's mother R. Jaya (deceased) was working as Sub-Inspector of Police, Madurai City and she died on 14.09.2008, of course, while she was in service. She left behind her mother, one daughter and one son as dependants. The Respondent/Writ Petitioner (son of the deceased) had applied for compassionate appointment on 24.12.2008. His name was included in the State-wide Seniority List and his Seniority Number is S.No.1782.

11. According to the Appellants, the Respondent/Writ Petitioner's present position in the Waiting List is S.No.1534.

12. It transpires from the Composite Certificate (given in respect of the compassionate appointment), dated 20.8.2009 issued by the Tahsildar, Vadipatti to and in favour of the Respondent/Writ Petitioner is that his mother's name was R. Jaya (since deceased) and she had left behind him and his sister V. Jegatheeswari (unmarried) as dependants and in the said certificate, it was mentioned that the family of the Respondent/Writ Petitioner, after the death of his mother, is in indigent state and the present income of the family is Rs.12,000/- per annum.

13. There is no doubt in regard to the fact that the Respondent/Writ Petitioner's mother died while she was serving as Sub-Inspector of Police, Madurai city, after illness on 14.09.2008. Although on behalf of the Appellants, they relied upon G.O. (Ms) No.135, Labour and Employment (02) Department, dated 4.10.2006, wherein, the Government after careful examination of the matter, had decided that the date of death of the deceased Government Servant be taken for fixing the seniority for appointment under compassionate ground and accordingly, directed the date of death of Government servant for fixing the seniority for making appointments under compassionate grounds and that apart, the Respondent/Writ Petitioner's current position in the seniority list of candidates waiting for such compassionate appointment is in S.No.1534, this Court is of the considered view that the Learned Single Judge while issuing necessary direction to consider the case of the Respondent/Writ Petitioner on priority basis is correct in that regard, but further issuance of a direction for grant of 'compassionate appointment to and in favour of the Respondent/Writ Petitioner out of turn forthwith, if otherwise found eligible' is not correct, per se in the considered opinion of this Court.

14. Hence, this Court while directing the Appellants to consider the Respondent/Writ Petitioner's case on priority basis in regard to the compassionate ground appointment as expeditiously as possible, with right earnestness and in all seriousness (of course in accordance with Law) and in any event, not later than eight weeks from the date of receipt of a copy of this order.



15. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently connected, Civil Miscellaneous Petition is closed.

16. Before parting with the case, this Court makes it abundantly clear that the judgement passed by this Court in the present Writ Appeal shall not be cited treated as a precedent, since the present judgement is passed after taking into account the peculiar facts and circumstances of the instant case, which float on the surface.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+ 1 cc TO Mr. R. Subramanian, Advocate in SR No. 84246

+ 1cc to The Special Government Pleader in SR.No. 84370

vsn

AE/MR KKR/SAR2/16.11.2017/5P/3C

**JUDGEMENT MADE IN
W.A. (MD) No. 1243 of 2017
and
C.M.P (MD) No. 8666 of 2017
30.10.2017**