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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2766 of 2018

and

CMP No.22838 of 2018

1. The Director General of Police,
Mylapore, Chennai - 600 004.

2. The Commandant,
Tamil Nadu Special Police I Battalion,
Trichy-2 ... Appellants/Respondents

Vs.

G.Sudhakar

... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 10.01.2018 made in W.P.No.31480 of 2016.

WP.No. 31480 of 2016: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified mandamus to call for the records of the 2nd respondent in Na. Ka. No.D1/324/2013 dt 5.3.2013 confirming the earlier orders in Na. Ka. No.D1/2582/07 dt 23.6.2011 and quash the same and consequently direct the 2nd respondent to forward the proposals as directed by the 1st respondent in RC. No. 38845/CA2/2013 dt 15.3.2013 for appointment of the petitioner in a suitable job on compassionate grounds.

For Appellants : Mr.M.R.Udaya Kumar AGP

For Respondent : Mr.S.Kamadevan

J U D G E M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J)

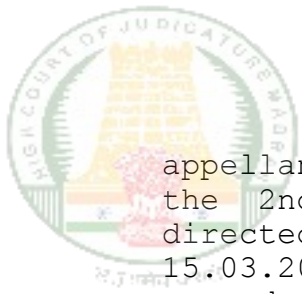
Writ Appeal is directed against the order passed in W.P.No.31480 of 2016 dated 10.01.2018, by which the writ Court while allowing the writ petition, directed the appellants to consider the claim of the respondent for appointment on compassionate grounds, within a period of six weeks from the date of receipt of a copy of the order made in the writ petition.



2. Short facts leading to the appeal are that respondent's father Thiru.Gopal, while in service as an Office Assistant in the office of the 2nd appellant herein, viz., Commandant, Tamil Nadu Special Police, I-Battalion, Trichy-12, died on 05.06.2001, leaving behind the respondent, his mother and elder sister, who has studied only upto VII Standard. At that time, respondent though completed Higher Secondary, has not attained majority. Taking note of the family circumstances, he made an application on 17.09.2002 to the appellants and also to the Hon'ble Chief Minister's Cell for appointment, on compassionate grounds. Vide letter dated 27.02.2003, the Director General of Police, Chennai, the 1st appellant herein intimated the respondent to approach the Commandant, Tamil Nadu Special Police I Battalion, Trichy-12, the 2nd appellant herein. Accordingly, the respondent approached the 2nd appellant. As there was no response, on 15.06.2003 he made a fresh representation. Thereafter, 2nd appellant directed the respondent to furnish the Death Certificate, Legal Heir Certificate and Succession Certificate.

3. In the meanwhile, Government of Tamilnadu imposed a ban for appointment in all departments including the appointment on compassionate grounds and the ban was lifted in the year 2006. Thereafter, the request of the respondent was taken up for consideration. While so, there was a rival claim by one Sumathy claiming that she is the second wife of the respondent's father and also entitled to get terminal benefits of the respondent's father. Thus, 2nd appellant was not able to take any decision on the respondent's claim. Thereafter, by mutual understanding, a written arrangement was submitted before the 2nd appellant. As per the understanding, the respondent's mother and the said Sumathy would receive the terminal benefits equally, and the respondent would be entitled to seek appointment on compassionate grounds.

4. According to the respondent, the said understanding was accepted by the 2nd appellant and an order was passed on 15.02.2010 apportioning the terminal benefits and he was directed to make claim for compassionate appointment. Accordingly, the respondent submitted the application along with necessary documents. Said application was rejected by the 2nd appellant vide communication dated 23.06.2011 stating that the application seeking compassionate appointment was made only on 16.06.2005 i.e, beyond three years, after the death of respondent's father and it is against the Government Orders. Further representations of the respondent for reconsidering the issue were also rejected by the 2nd appellant on 05.03.2013 and 30.04.2013, respectively, on the same grounds. Aggrieved by the same, the respondent has filed W.P.No.31480 of 2016, for a writ of certiorarified mandamus, to quash the proceedings of the 2nd



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appellant dated 05.03.2013 and for a consequential direction to the 2nd appellant to forward the respondent's proposal as directed by the 1st appellant in Roc.No.38845/CA2/2013, dated 15.03.2013, for appointment in a suitable job on compassionate grounds.

5. Before the writ Court, the Commandant, Tamil Nadu Special Police I Battalion, Trichy, has filed counter and submissions were made that as per the provisions of law, a person, who is seeking appointment on compassionate ground, has to submit his / her application within a period of three years from the date of death of the deceased, whereas, the respondent has made the application only after the period of three years from the date of death of his father. Therefore, respondent's case was rightly rejected and prayed for dismissal of the writ petition.

6. After advertng to the rival submissions, writ Court by order in W.P.No.31480 of 2016 dated 10.01.2018 ordered as hereunder

"5. But, this Court is unable to agree with the above said submission, for the reason that a communication dated 27.02.2003 of the Director General of Police, Chennai / first respondent herein clearly shows that the petitioner had made application on 17.09.2002 itself and in the said communication, the petitioner was directed to approach the competent authority / second respondent herein. Therefore, the impugned order passed by the second respondent stating that petitioner has made his application only after a period of three years cannot stand to legal scrutiny.

6. Another stand of the respondent that since there was a dispute between the two wives of the deceased, the respondents are not able to consider his request also cannot be sustainable, for, in the 3rd paragraph of the counter affidavit filed by the respondents, it has been clearly mentioned that the dispute between the two wives with regard to disbursement of retiral benefits as well as appointment on compassionate ground has been settled through the compromise agreement dated 07.07.2009, whereby they have authorised the second wife to receive the pension and it is also further stated that appointment on compassionate ground should be given to the son of the first wife / petitioner herein. The said compromise agreement was also authorized by the office of the Accountant General vide its proceedings dated 13.01.2010. Therefore, in view of such a mutual compromise agreement between the two wives of the deceased, the impugned order passed by the second respondent rejecting the request of the petitioner seeking appointment on compassionate ground is liable



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to be set aside and accordingly, the same is set aside.

7. In fine, the writ petition is allowed with a direction to the second respondent to consider the claim of the petitioner for appointment on compassionate ground within a period of six weeks from the date of receipt of a copy of this order. No Costs."

7. Assailing the correctness of the order made in W.P.No.31480 of 2016 dated 10.01.2018, instant writ appeal is filed on the following grounds.

(a) that as per G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995, application for appointment on compassionate ground should be made within three years of the death of the government servant. In addition, the eligibility criteria and educational qualification of the legal heir have to be assessed on the date of application which has to be submitted within three years from the date of death of the deceased government servant. Moreover, the respondent has not attained the age of 18 years either at the time of submitting the first application or within a period of three years from the date of death of the deceased government servant.

b) that the writ Court has not considered that as per the Government Letter No.103009/Pol.XV/2001-1 Home Department dated 08.10.2001, in the case of M.Jagannadha Rao and Doraiswamy Raju, reported in AIR 2000 Supreme Court 2782, the Hon'ble Supreme Court held that vacancies cannot be reserved for a dependent /claimant minor at the time of death of employee till he attains majority after a number of years and such reservation would be against the intention behind compassionate appointment viz., to provide immediate relief to the family of deceased employee and this fact was reiterated by the first appellant in the memorandum in Rc.No.153415/C.A.2/2007 dated 15.10.2007.

c) that the writ Court ought to have considered that as both the wives of the deceased Gopal, have belatedly submitted petitions on 16.06.05 (i.e) after 4 years from the date of death of their husband (i.e.) 05.06.2001 and hence their request for compassionate appointment could not be considered as per the orders issued by the Government in G.O.Ms.No.120 Labour and Employment Department date 26.06.1995 and in this connection, a memorandum in C.No.D1/2585/2007 dated 05.07.2011 was also sent to them.



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d) that the writ Court ought to have considered that Tr.P.Gopal, Office Assistant respondent's father was placed under suspension on 15.04.1999 AN by the second appellant for performing bigamous marriage and while on suspension, he expired on 05.06.01. Further action on the charges initiated against him in PR No.75/1998 u/r 17(b) of TNCS (D&A) Rules 1955, was dropped and that the suspension period was settled as duty for pensionary benefits.

e) that the writ Court has not considered the fact that as the respondent has not applied for compassionate appointment within three years from the date of death of his father and he has not attained the age of 18 years within three years from the date of death of his father, an endorsement in C.No.D1/324/2013 dated 30.04.2013 was served to him, informing that his request for appointment on compassionate grounds after a lapse of prolonged years, could not be considered.

f) that the writ Court did not take note of the fact that the petitioner has not given any application to the Hon'ble Chief Minister's Cell on 17.09.2002 and it was not received by the petitioner / appellants. Moreover, neither the respondent nor his mother has approached the competent authority within the stipulated time of three years. Instead, Tmt.Jeyamani (first wife) has given a petition dated 15.06.2003 requesting pensionary benefits and for which she was instructed to produce Death certificate, Legal heir certificate and succession certificate.

g) that the writ Court ought to have seen that as both the wives have not settled the issues till 2009, it was not able to take a decision in settling the pensionary benefits.

8. Based on the grounds, arguments have been made by Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader. On behalf of the respondent, counter arguments have been advanced by Mr.S.Kamadevan.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. G.O. Ms. No.120 Labour and Employment Department dated 26.06.1995, relied on by the appellants to contend that the application for compassionate appointment should be submitted within three years from the date of death of the government servant, is extracted hereunder:



GOVERNMENT OF TAMIL NADU

ABSTRACT

Public Services - Schemes of compassionate ground appointments - modifications - issued.

LABOUR AND EMPLOYMENT DEPARTMENT

G.O. Ms. No.120
26.06.1995

Dated:

Read again:

1. G.O.Ms. No.225, Labour and Employment
dt.15.02.72
2. G.O.Ms. No.560, Labour and Employment
dt.03.08.77
3. G.O.Ms. No.1579, Labour and Employment
dt.21.07.81
4. Government Lr. No.2563/N1/82-2 Labour and
Employment
dated 11.03.02
5. Government Lr. No.43242/N1/81-9 Labour and
Employment
dated 01.06.82
6. Government Lr. No.4810/Q1/95-1 Labour and
Employment
dated 28.02.95.

ORDER:

The Tamil Nadu Administrative Tribunal, Madras in its orders in O.A. No.6554/93 dated 15.10.93 and in O.A. No.5111/94 dated 17.10.94 had observed that the existing Government Orders under the scheme of Compassionate ground appointments may be revised and until such review appointment on compassionate ground may be suspended. Accordingly, the Government in the letter sixth read above had issued instructions to all Heads of Department to keep in abeyance all appointments and matter relating to compassionate ground appointments.

2. Simultaneously, the Government also reviewed the existing orders under the scheme. After careful review the Government issue the following modifications to the Scheme.

1. The application for appointment on



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compassionate grounds should be made within three years of the death of Government servant.

2. The maximum age limit for such appointment be raised to 50 in the case of widows of the deceased Government Servants.

This order will take effect from the date of issue of the order.

(By order of the Governor)

P.Shankar
Secretary to Government

11. Fact that the deceased Government servant had two wives, Smt.Jeyamani and Smt.Sumathi, was known to the Commandant, Tamil Nadu Special Police I Battalion, Trichy, the 2nd appellant, even in the year 2001, and it is evident from the letter dated 22.6.2001 sent to them and the same is reproduced.

By Regd Post

Na.Ka. No.E2/224/7288/2011

O/o

Commandant

Date: 22.6.2001

TNSP.1st Btltn,
Trichy - 12

MEMO

Sub : Police Department - TNSP 1st Batln Trichy - 12 - legal

heirs of the deceased Government Servant Thiru P.Gopal granting pensionary benefits to the legal heirs - reg.

Ref: Telegram intimating the death of Thiru.P.Gopal, the Office Assistant, dated 6.6.2001.

Thiru P.Gopal served as Office Assistant in this office, his father Thiru P.Perumal informed through telegram that he had died on 5.6.2001.

2. The Deceased Gopal served as Cook and on his promotion he was elevated as Office Assistant at the TNSP 1st Battalion, from 3.10.97 onwards.

3. It was informed that he was married to one Jayamani in the year 1979 and he one male issue viz.,



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Sudhakar and one female issue viz., Suganthi which was informed on 10.12.1989.

4. He submitted his application that on 2.3.1994 he had married one Sumathi and out the wedlock he has a male and female issues and to appointment them as his legal heirs. While the first wife was alive he had married for the second time for the said offence disciplinary proceedings was initiated against Thiru.Gopal, Office Assistant and in which Thiru.Gopal, Office Assistant was removed from service on 15.4.99 afternoon onwards.

5. He had submitted his appeal before the Inspector General of Police Armed Force, Chennai, on which Thiru.P.Gopal was reinstated in service and from 15.4.99 it was treated as suspension, and it was instructed to conduct full enquiry in this regard, an order was passed by the Inspector General of Police, Armed Force Chennai. Accordingly, P.Gopal, Office Assistant was under suspension from 15.4.99 afternoon onwards, he died on 5.6.2001.

6. Therefore to disburse the death benefits to the legal heirs should be given without any disputes, it is instructed to produce the following documents at the Battalion Office.

1. Death Certificate of the deceased Government servant P.Gopal
2. Reasons for death
3. Legal heirship certificate (to be obtained from the Revenue Department)
4. Succession Certificate to be obtained from the Court

7. It is informed that the above said certificates to be submitted at the office during the working days.

Sd/- P.Balasubramanian
Commandant

To
Thiru T.Perumal, F/o late Gopal
T.Batharpettai, Thuvarichettipalaya (via)
Thuraiyur Taluk, Trichy District

Tmt.Jayamani w/o late Gopal
T.Batharpettai, Thuvarichettipalaya (via)
Thuraiyur Taluk, Trichy District

Tmt Sumathi (second wife)
W/o.late Gopal



T.Batharpettai, Thuvarichettipalaya (via)
Thuraiyur Taluk, Trichy District

Copy to: Inspector, Head quarters, TNSP 1st Battalion,
Trichy,

To avail the above said documents, it is instructed to help the deceased family. It is instructed that in this regard either to sent Sub-Inspector/Head constable to take appropriate action in this aspect.

12. As regards disbursement of pension, the 2nd appellant has sent a letter dated 16.9.2002 to the 2nd wife of the deceased Government servant, directing her to submit documents. Copy of the said letter has also been sent to the first wife, Smt.Jeyamani and Shri.Perumal, father of the deceased. Letter dated 16.9.2002 reads thus.

Through Regd Post/hand delivery
Na. Ka. No.T1/7288/2001
Date : 16.9.2002

O/o Commandant
TNSP 1st Batln.,
Trichy-12

Memorandum

Sub: Pension - disbursement of pension to the
legal heirs of
deceased Thiru P.Gopal (died on 5.6.2001)
Office Assistant - reg.

Ref: The same number of this office Memo dated
22.6.01; 11.9.01;
10.10.01; 5.12.01; 12.3.02; 4.4.02 &
17.6.02.

Thiru.P.Gopal served in this office as Office Assistant was informed by his father that he died on 5.6.2001 afternoon through telegram. On that basis with reference to the last cited above to the last known residential address it was informed to submit the certificates and other documents. As the second wife Sumathi was residing in the said address, in the presence of Village Administrative Officer the memo dated 22.6.01 was served on her mother. All the other memos that was sent on the second wife Tmt.Sumathi returned that she is not in the said address. Further Tmt.Sumathi (second wife) now that she is not living in the said village (T.Bhatharpettai village) and they do not know where she went which come to know in the course of enquiry, which has been stated in the report of the Village Administrative Officer, No.1, Thalugai



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Village, Thuraiyur Taluk, Trichirapalli dated 19.7.01.

2. In this situation the above said Tmt Sumathi has sent a notice through her counsel Tr.V.Sekar dated 9.9.2002 stating that she is second wife of deceased Tr.P.Gopal and that all the death benefits should be paid to her alone. Therefore as already instructed to submit the following certificates, the petitioner is instructed to submit those documents immediately to this office.

- (1) Death certificate (original)
- (2) Legalheirship certificate (original and copies) attested copy
- (3) Succession certificate : to be obtained from court

3. If the above said documents are submitted as early as possible, on verifying the same it is informed that appropriate further action will be taken in this regard.

Sd/- K.M.Mohammed Haniffa
For Commandant

The dispute between the two wives in receiving pension and retirement benefits of the deceased Government servant, was known the department from 2001 onwards.

13. From the facts narrated it could be seen that the application submitted on 17.09.2002, within a period of three years from the date of death of the respondent's father was duly taken up for consideration and that the Commandant, Tamil Nadu Speical Police I Battalion, Trichy, the 2nd appellant, is stated to have directed the respondent to produce Death Certificate, Legal Heir Certificate and Succession Certificate.

14. Ultimately, wives arrived at a compromise agreement on 7.7.2009, certified by a Notary Public, to the effect that pensionary benefits would be equally divided and compassionate appointment be given to the respondent, son of the first wife of the deceased.

15. Letter (Ms) No.202 dated 8.10.2007 of the Secretary to the Government, Labour and Employment Department, addressed to all the Heads of Departments, is reproduced hereunder:

Labour and Employment Department
Letter (Ms) No.202, dated 08.10.2007

From
Thiru Ramesh Kumar Khanna, I.A.S.,
Secretary to Government



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To
All Heads of Departments,
Sir,

Sub: Public Services - Schemes of compassionate
ground appointment -
Time limit to present application - Time
limit fixed - Instructions
issued.

Ref: 1. G.O. (Ms) No.120 Labour and Employment
Department, dated
26.06.1995

2. Govt. letter No.39924/Q1/2005-1, Labour
and Employment
Department, dated 11.10.1995

3. From the Collector of Tirunelveli D.O.
Letter Roc No.A4/
105795/2002 dated 28.09.2003, addressed to
the Special

Commissioner and Commissioner of Revenue
Administration,
Chennai-6

4. From the Special Commissioner
Commissioner of Revenue
Administration, Chennai-5, letter
No.104/47209/2003,
dated 13.11.2003, addressed to Secretary to
Government,
Revenue Department

5. G.O. (Ms) No.42, Labour and Employment
Department dated
12.03.2007

I am directed to state that on the recommendations
of the Staff Committee, orders were issued in
paragraph 2.6 of the Government order fifth cited
among others that the existing time limit of 3 years
for filing of applications from the date of the death
of the Government Servant shall be continued.

2. As per the above direction, many departments of
Secretariat/some of the Heads of Departments have now
requested to seek general clarifications issued in
Government letter second cited indicating that the
time limit of three years period specified in the
Government order first cited is applicable to the
dependents of the Government servants who died while
in service on or after 26.06.1995 and the above said



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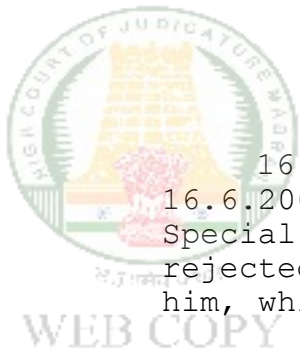
Government order are not applicable to past cases.

3. The very purpose of giving compassionate ground appointment scheme is only to help the family of the deceased Government servant to tide over the sudden indigent circumstances unexpectedly created by the sudden and untimely death of the Government Servant. So the appointment should, therefore be provided immediately to redeem the family in distress and the provision of compassionate appointment after a lapse of very long time defeats the very purpose of the compassionate ground appointment scheme. The Supreme Court has made critical observations with regard to this issue and that the critical issue is whether the family is in indigent circumstances. In the cases of application made after ten years, twenty years and thirty years from the date of death of the Government servant, obviously the family cannot be considered in indigent circumstances. In view of this, instructions issued in the reference 2nd cited could not be considered to the applicability to past cases after the lapse of 3 years; even where the government servant died prior to 26.6.95. In other words the applicability of the clarification issued in second letter cited was for only to past cases to cover the period of 3 years only and not for infinite period.

4. In this connection, I am to add that based on the direction of the Supreme Court regarding indigent circumstances of the family and the decision taken by the Cabinet accepting the recommendations of the Staff Committee, the Government direct the compassionate ground appointment have to be made as per the detailed guidelines issued in the Government order fifth cited wherein it has been clearly mentioned that the existing time limit of 3 years for filing applications from the date of death of Government Servant shall be continued.

5. I am, therefore, to request you to follow the above guidelines issued in the Government order fifth cited for all present, past and future cases and the instructions issued in Government letter second cited cannot be taken into account. The crux of matter is that the time limit shall be 3 years for filing of application from the date of the death of Government servant and is applicable to all cases, including where the Government servant has died in service even prior to 26.6.1995 also.

SECRETARY TO GOVERNMENT



16. Ultimately, by referring to the separate letters dated 16.6.2005, submitted by the wives, Commandant, Tamil Nadu Special Police I Battalion, Trichy, the 2nd appellant, has rejected the request of the respondent, with a copy marked to him, which reads thus:

Regd Post

Na. Ka. No.T1/2582/07
Date: -7-2011

MEMO

Sub: Police - TNSPF 1st Batln., Trichy - seeking appointment under
compassionate ground to the legal heir of
the deceased
Thiru.Gopal served as Office Assistant -
Reg.

Ref: Petition by G.Sumathy wife of Gopal (deceased
Office

Assistant) dated 16.6.05

2. Petition by G.Jayamani wife of Gopal
(deceased Office

Assistant) dated 16.6.05

3. This office memo of same number, dated
23.6.2011.

In this office, Thiru.Gopal served as Office Assistant due to his ailment died on 5.6.2011, Tmt. Jayamani (first wife) submitted the application on 16.6.2005 to give appointment under compassionate ground to his first wife's son to Thiru.Sudhakar. Further the second wife Tmt.Sumathi have also submitted application for the appointment under compassionate ground. Further both wives have submitted the amicable settlement deed, Tmt.Sumathi has consented for the grant of appointment to Thiru.Sudhakar son of Tmt.Jayamani and signed the same.

2. Further, as both the wives having submitted the application after the lapse of 4 years, the application seeking appointment on the basis of compassionate ground is hereby rejected which has been informed with reference to 3rd cited in the memo of this office. The copy of it is enclosed herewith.

Enclosure

For Commandant
TNSP 1st Batln.,



Trichy

17. Though a specific averment has been made by the respondent that the application submitted by him within three years has been forwarded to the 2nd appellant, and that, responding to the same, the appellant directed the respondent to submit Death certificate, Legal heir certificate and succession certificate, there is no denial. But reference has been made only to the petition dated 16.6.2005, said to have been submitted by the wives of the deceased. Appellants, in their counter affidavit have candidly admitted that both the wives did not submit the succession certificate issued by the court, and thus could not settle the pension and terminal benefits and not take a decision on the request for compassionate appointment.

18. Communication of the Commandant, Tamil Nadu Special Police I Battalion, Trichy, dated 5.3.2013, with a copy marked to the respondent, endorsement of the 2nd appellant dated 30.4.2013 is reproduced hereunder:

From	To
Commandant	Director of
Police Dept.,	
T.N.S.P. force Thiruchirappalli-12	Tamilnadu,
	Chennai -4

Na.Ka.No.D1/324/2013/Dated 05.03.2013

Sir,

Sub: Police - TNSPF - Tr G.Sudhakar S/o (late)
Tr.P.Gopal, Office Assistant, seeks
appointment under Compassionate ground in
this regard sought for opinion - reply report - sent -
reg.

Reg: The Director of Police Department, Chennai
vide his memo in
Na.Ka.No.001038/Pen.3/2013 dated 03.01.2013.

With reference above cited to the Memo of Head
office your kind attention is drawn.

2. Thiru P.Gopal having served in this battalion
as Office Assistant died on 05.06.2001 due to his
ailment his first wife Tmt.Jayamani 2nd wife
Tmt.Sumathi both of them has sought for appointment
under compassionate grounds, the first wife
Tmt.Jayamani sought appointment under compassionate
grounds to her son Tr.Sudhakar on 18.06.2005 second



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Second wife Sumathi sought for appointment under compassionate grounds to her on 16.06.2005 and had submitted her application.

Further to wives of the deceased Office Assistant Tr.Gopal due to misunderstanding was existing between them hence Jayamani had sought for appointment under compassionate grounds to her son Sudhaka belatedly. The copy of the petition is enclosed herewith further in view of the G.O.No.120 Labour and Employment Department dated 26.06.1995 to claim appointment under compassionate grounds, the legal heirs of the deceased Government Employee ought to submit their application within a period of 3 years. The petitioner has submitted after a period of four years for the said reason the application of the petitioner is hereby rejected and this facts has already been intimated vide memo in Na.ka.L.D.1/2582/2007 dated 16.06.2011 which is hereby informed. The copy of the same is enclosed herewith.

Sd/-

Commandant

TNSPF.1st Battln., Trichy

Copy to Sudhakar

757, VKC Complex, Perumalmamali Adivaram,
Thuraiyur Taluk, Trichy.

Na.Ka.No.D1/324/2013
Trichy - 12

O/o Commandant,

Date:

30.04.2013

ENDORSEMENT

Sub: Police - TNSPF 1st Battln., Trichy -
appointment under compassionate grounds -
deceased Thiru.Gopal served as Office Assistant
in the office of this battalion, granting pensionary
benefits to his legal heirs and appointment
under compassionate grounds furnish details -
reg.

Ref: 1) Letter by the Accountant
No.PO4/4/10401145/FP/2009 - 2010/327
Dt.13.01.2010.

2) Memo of Head Office in
Na.Ka.No.001038/Pension - 3/2013, Dated
03.01.2013, 07.03.2014 and 14.03.2013.

3) Memo of Head Office in
Na.Ka.No.38845/C.A.2/2013, date 15.03.2014
and N.A. Memo M.2 No.12159(9)/A2/13 date



24.1.2013.

4) This office letter in Na.Ka.No.D1/324/2013 date 05.03.2013.

WEB COPY The deceased Thiru.Gopal served as Office Assistant in this office of Battalion and died due to his illness on 05.06.2011, while his first wife Tmt.Jayamani was still alive, he had married second wife Tmt. Sumathi, and the monetary benefits of the pension was pending for along time. Both the wives in the presence of advocate has entered into compromise and agreed to divide the pensionary benefits equally among them, in which to disburse the monetary benefits to the 2nd wife Sumathi and to get appointment under compassionate grounds which is to be granted after the death of their husband to sudhakar son of the first wife Tmt.Jayamani. As the application has not been submitted within the stipulated period, he was not granted with the appointment.

2) Further in this regard proposal to the pension was submitted to the Accountant General, the Accountant General vide his Letter No. No.PO4/4/10401145/FP2009 - 2010/327 Dt.13.01.2010 and PO.4/4/FP/2009-10/1041145/PPO dated 05.01.2010 the family pension to the first wife Tmt.G.Jayamani, gratuity was granted to Tmt.G.Jayamani, and the gratuity amount was paid to (2) Sudhakar (3) G.Sugnathi. As first wife is still alive, under Marriage Act 1955 Family Pension could not be granted to the second wife which has been mentioned and the gratuity amount of Rs.18,259/- to the legal heirs of second wife G.Karthik and G.Kanaga was ordered to be retained. Accordingly the legal heirs of the first wife the amount of Rs.27,389/- as per this office schedule No.56/2010-2011, dated 21.04.2010 was disbursed. The amount of Rs.18,259/- to the legal heirs of the second wife Tmt.Sumathi under further order is received from Accountant General it is being retained. A reminder letter has been forwarded to the Accountant General. In the event of receiving any further order from the Accountant General, the said detail will be furnished to the petitioner which is hereby informed.

Enclosure: copy Intimation letter sent to petitioner
Copy of the Accountant general.

Sd/-

For Commandant
TNSPF 1st Battalion, Trichy - 12.

To



Thiru G.Sudhkar
757. V.K.C.Complex
Perumal malai Adivaram
Thuraiyur (Taluk)
Thichy.

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19. Reasons adduced in the counter affidavit and in the memorandum of grounds that the son of the 1st wife did not complete 18 years of age, and hence he was not eligible for compassionate appointment, is not the reason assigned in the rejection order. It is well settled that an order impugned has to fail or succeed for the reasons entertained in the order, and cannot be supported by the averments in the form of counter affidavit, subject to the reasons contained in the record. Reference can be made to few decisions:

(i) In *Mohinder Singh Gill v. Chief Election Commr.*, reported in 1978 (1) SCC 405, and at Paragraph 8, the Apex Court held as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commr., of Police, Bombay v. Gordhandas Bhanji*, reported in AIR 1952 SC 16:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

(ii) The above position of law has been restated in *Hindustan Petroleum Corpn. Ltd., v. Darius Shapur Chennai* reported in 2005 (7) SCC 627, and at Paragraph 24 of the judgment, the Supreme Court held as follows:

"When an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or on the grounds available therefor in the record. A statutory



authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit dehors the order or for that matter dehors the records."

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20. Reference made by the appellants to the decisions of the Hon'ble Supreme Court, would not lend support, to the case of the appellants, because whether the respondent was a minor at the time of submission of his application for compassionate appointment, was never an issue at all.

21. Though several grounds have been raised, Mr. P. S. Sivashanmugasundaram, learned Special Government Pleader, stressed only on the point, that there was a dispute between the wives of the deceased Government servant, and hence the issue of compassionate appointment could not be resolved. Though the appellants have denied the receipt of the application dated 17.9.2002, said to have been submitted by the respondent, while addressing the same, writ court, vide impugned order in W.P. No. 31480 of 2016 dated 10.01.2018, at para 9, has recorded, as hereunder:

"5. But, this Court is unable to agree with the above said submission, for the reason that a communication dated 27.02.2003 of the Director General of Police, Chennai / first respondent herein clearly shows that the petitioner had made application on 17.09.2002 itself and in the said communication, the petitioner was directed to approach the competent authority / second respondent herein. Therefore, the impugned order passed by the second respondent stating that petitioner has made his application only after a period of three years cannot stand to legal scrutiny.

Writ court, has adverted to the objections of the appellants in proper perspective and accordingly set aside the orders of rejection, and issued directions.

22. In the light of the above discussion, we find no merit in the writ appeal, and the same is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is dismissed. However, it is observed that the respondent shall submit the documents such as legal heir certificate, indigent certificate from the Tahsildar and any other document required for the purpose of providing employment assistance on compassionate grounds, within a period of 15 days from the date of receipt of a copy of this order. Having regard to the scheme of compassionate ground that it should be provided immediately to tide over the financial constraint of the bereaved family and having regard to the time consumed from the date of rejection, this Court is of the view that the respondent should be provided



with employment on compassionate grounds, within a period of six weeks from the date of submission of the above documents.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ars/asr
TO

1. The Director General of Police,
Mylapore, Chennai - 600 004.
2. The Commandant,
Tamil Nadu Special Police I Battalion,
Trichy-2

+1cc to Mr.S.Kamadevan, Advocate, S.R.No. 86876

W.A.No.2766 of 2018
and
CMP No.22838 of 2018

PD(CO)
GN(07/02/2019)