



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAMW.P.(MD) No.9819 of 2013 and
MP(MD)No.1 of 2015

M.Geethanjali

... Petitioner

-vs-

1. The Director,
Department of Public Health and Preventive Medicine,
Chennai-06.

2. The Deputy Director of Health Services,
Department of Public Health and Preventive Medicine,
Sivakasi,
Virudhunagar District.

3. The Medical Officer,
Primary Health Centre,
M.Pudhupatti,
Sivakasi Taluk,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to consider the petitioner's application dated 17.04.2013 for appointment to the post of Junior Assistant or any suitable post in any District in respondent Department on in compassionate ground.

For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel for Mr.R.Manimaran.
For Respondents : Mr.V.Muruganantham,
Additional Government Pleader.

ORDER

The relief sought for in this writ petition is for a direction to direct the first respondent to consider the application submitted by the writ petitioner on 17.04.2013, for appointment to the post of Junior Assistant or any suitable post in any District in respondent's department on compassionate ground.

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2.The learned Senior Counsel appearing on behalf of the writ



petitioner contented that the writ petitioner has completed higher secondary course and her date of birth is 19.03.1995. The petitioner had attained the age of majority on 19.03.2013, thus the petitioner became fully qualified to be appointed in any public post in commensuration with the educational qualification acquired by the petitioner.

3.The mother of the writ petitioner Smt.R.Murugeswari was employed as a Village Health Nurse in M.Pudhupatti Village. The marriage between the mother and the father of the writ petitioner was dissolved through an order of the competent Court. The mother was subsequently murdered by her husband on 17.02.2006 and the father of the writ petitioner was convicted to life sentence. In fact, the mother of the writ petitioner died, while she was in service as Village Health Nurse in M.Pudhupatti Village, Sivakasi Taluk in Virudhunagar District. After the demise of the mother, the writ petitioner and her brother were taken care of by their maternal uncle and they continued their school education with the help and assistance of the maternal uncle.

4.The learned Senior Counsel strenuously contended by stating that the claim of compassionate appointment cannot be rejected, merely on the ground of delay. Pragmatic approach is to be adopted, while dealing with the point of delay, more specifically, in the case of compassionate appointment, by considering the facts and the circumstances prevailing in each and every case.

5.The learned Senior Counsel, while admitting the fact that the deceased employee passed away on 17.02.2006 and the application seeking compassionate appointment was preferred by the writ petitioner only on 11.07.2011, after a lapse of about 5 years, contented that the delay has to be condoned, in view of the facts and circumstances of the case. In support of the contentions, the learned Senior Counsel referred the judgment of the Madurai Bench of Madras High Court, delivered on 14.12.2017, in the case of **M.Tamilarasan Vs. The Chairman & Managing Director, TNEB and others, in W.P.(MD)No.2280 of 2012 etc.,** The following paragraphs are relevant in respect of the case of the hand.

" 38.1.A similar issue came to be considered by the Division Bench of this Court in W.A.(MD)No.1400 of 2011 in the matter of S.Velraj v. The Superintending Engineer, Tamil Nadu Electricity Board, Tirunelveli Electricity Distribution Circle, Tirunelveli and another. The relevant parts of the said Division Bench Judgment are extracted hereunder:

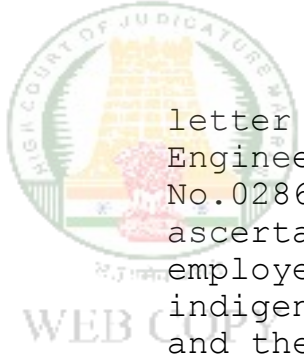
2.The appellant is the eldest son of one S.Shanmugiah, who was working as Helper in the respondent Board and died in harness on 19.03.1992. At the time of death, the appellant was aged about 12 years. On attaining majority, he applied for compassionate appointment. However, the same was rejected on the ground that the application had been filed beyond three years. The said order was challenged before the learned



Single Judge, who dismissed the Writ Petition relying upon a series of judgments.

3. It is admitted fact that the employee died on 19.03.1992, leaving behind four children and at that time, the appellant is the eldest son, aged about 12 years. If he applied for appointment on compassionate ground at that time, when he was 12 years, his application would have been rejected on the ground that he was a minor and, therefore, on attaining majority, the appellant rightly applied for appointment on compassionate ground. However, taking into consideration the plight of the family and also the young age of the mother and other children, it is a case where appointment on compassionate ground has to be given. Three years limitation cannot be applied in strait-jacket formula and each and every case has to be approached differently, based on the facts. Since the eldest son of the family has rightly applied for appointment on compassionate ground, on attaining majority, the respondents have to consider the appellant's application for appointment on compassionate ground."

47. Moreover, it is the settled proposition that, impossibility cannot be directed to be followed. If it is an admitted fact that at the time of death of an employee, the legal heir i.e., the son and the daughter are minors, one cannot except such minors can make applications for compassionate appointment. Assuming that, those minors are making applications for compassionate appointment, the same cannot be considered by the employer as the minors cannot be appointed. Therefore, the natural corollary would be, to wait till the minor attains the majority and if they otherwise qualified, including educational qualifications, certainly they would be entitled to compassionate appointment. Though the indigent circumstances and penurious situations are not the only criteria, as has been held by the Division Bench of this Court in the Judgment cited in 2016 (5) CTC 125 in the matter of the Inspector General of Prisons, Tiruchirapalli District, Tiruchirapalli-1 and another vs. P. Marimuthu, that can be the main criteria, based on which only, the compassionate appointments are made. If a family or legal heir of the deceased employee, are not in indigent circumstances or penurious situations, certainly, the employer can refuse to grant compassionate appointment. That is the reason why, the Board proceedings heavily relied upon by the respondents, i.e., B.P.No.46 dated 13.10.1995, has been relaxed by the subsequent proceedings of the respondents in Proceedings No.17, dated 01.11.2011, pursuant to which, direction was already issued to all the Superintending Engineers concerned, to reconsider those applications, which were rejected for want of fulfillment of three years rule, by making a field enquiry. The field enquiry referred to in the



letter issued to the Superintending Engineers by the Chief Engineer of the respondent Department in his letter No.028610/G9/G9-1/2011-2, dated 01.11.2011, is nothing but ascertaining the situations as to whether the deceased employee's family is still in penurious situation and indigent circumstances. Therefore, these Board proceedings and the clarification letters issued by the respondent/Board, would clearly show that the penurious circumstance of the applicants alone be considered as main criteria, i.e, the reason why the Department has relaxed the three years rule. When that being the intention of the respondent Board and that is the right of the employer, in order to protect the families of the employees, who are deceased while employment, such approach is a right approach and be appreciable. In these Writ Petitions in some of the cases, the employees were died because of electrical shock or accident during the course of the employment. If the sole bread winner of the family died due to the accident while on duty, it is the foremost obligation on the part of the respondent/Board to lend maximum helping hand to lift the family from penurious circumstances. This was exactly done by the respondent/Board by issuing subsequent clarifications considering the stringent conditions of three years rule. Therefore, the respective impugned orders made in all these writ petitions except in W.P.No.4907 of 2012, in the opinion of this Court, are not in consonance with the Board proceedings and subsequent classificatory proceedings issued by the respondent Board and therefore, this Court is of the considered view that, these impugned orders are liable to be interfered with.

53.The respondents are directed to consider the respective applications made by the petitioners seeking for compassionate appointment and decide the same, taking into account the Board Proceedings of the respondent and the relaxation made to the said proceedings with regard to the three years rule etc., by proceedings No.17 dated 01.11.2011 and also, the law laid down by the Courts of Law in various Judgments cited above and pass suitable orders for appointment on compassionate ground to the petitioners within a period of two months from the date of receipt of a copy of this order.

6.Secondly, a reference has been made to the paragraph numbers 4,5,9,13 and 19 of the judgment of the Hon'ble Division Bench rendered in the case of, **Director of School Education and another Vs Chitralekha**, reported in (2016) 3 MLJ 63 and the same are extracted hereunder.

4. It is not in dispute that the respondent's mother was employed as a Secondary Grade Teacher in the Municipal Primary School, Kutchery Road, Erode and died on 28.02.1989, while in



service. As the husband of the deceased was an illiterate person, the respondent's brother applied for appointment on compassionate grounds. However, before the said application could be processed, he died. Then, the elder sister of the respondent also got married. Hence, the respondent made an application, dated 15.06.1999, seeking appointment on compassionate ground before the District Elementary Educational Officer, Erode, who forwarded the said application to the District Educational Officer, the second appellant herein.

5. As there was no response from the second appellant, the respondent / petitioner preferred an appeal before the first appellant, which was rejected, by order, dated 16.06.2010 passed by the first appellant. It is not in dispute that the application seeking compassionate appointment by the respondent herein was rejected only on the ground that she being a married lady was not entitled to get compassionate appointment.

9. Learned counsel appearing for the respondent submitted that as per the latest, G.O.Ms.No.165, dated 30.08.2010, married daughters could also claim compassionate appointment, had she been unmarried at the time of making application and accordingly, argued that the respondent was unmarried, when she submitted her application for appointment on 15.06.1999. Learned counsel further submitted that the mother of the respondent was the sole bread winner of the family and the father of the respondent was an illiterate person on the date of demise of her mother, all her children were minors and after attaining majority, brother of the respondent submitted an application for compassionate appointment and when the same was being processed, he passed away on 07.11.1997 and her sister also got married in the year 1999 and hence, as an eligible daughter of the deceased, the respondent submitted her application for appointment on compassionate ground on 15.06.1999 and on the facts and circumstances, sought for the dismissal of the writ appeal.

13. The averments made in the counter filed by the respondent / petitioner was not denied by the learned Additional Government Pleader. Further, it is not disputed that earlier, the brother of the respondent had applied for compassionate appointment, however, he died. Subsequently, the respondent's elder sister got married and therefore, being an unmarried dependent, the respondent applied for compassionate appointment. On the aforesaid circumstances, there could be no allegation against the respondent, for causing delay.

19. In the instant case, it is crystal clear that after the demise of the mother of the respondent, since her father was illiterate, her brother of the respondent herein made an application and while processing the application, he died and thereafter, her elder sister got married and hence, the

respondent herein submitted her application on 15.06.1999, requesting for appointment on compassionate ground. On the facts and circumstances, we are of the view that there is no delay in submitting the application by the respondent herein.

7. Thirdly, the judgment of the Hon'ble Apex Court of India in the case, **Syed Khadim Hussain Vs State of Bihar and others**, reported in **(2006) 9 Supreme Court Cases 195**, was also cited by the learned Senior Counsel. In paragraph No. 4 of the above judgment it is stated as follows:-

"The contention of the counsel for the State is that the application filed after 5 years after the date of death of the government employee will not be considered and he further submitted that the application filed on 07.09.1995 was rightly rejected by the authorities.

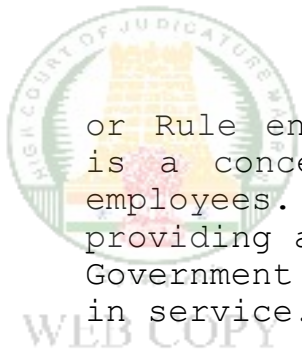
The Hon'ble Apex Court in paragraph number 5 had as follows:-

"5. We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons and the same was rejected. When the appellant submitted the application he was 13 years old and the application was rejected after a period of 6 years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment."

8. The learned Senior Counsel referred the judgment of the Division Bench of this Court, rendered in **R. Manimozhi Vs. The Director, Public Health and Preventive Medicine Department and Others**, reported in **2011 Writ L.R.279**. The Division Bench considered the fact and circumstances of the case and held that the delay in submitting the application should be dispensed with in the cases of the compassionate appointment.

9. The learned Senior Counsel at the outset made a submission that in the case on hand, no doubt there is a delay of 5 years in filing the application. However, the same has to be dispensed with, considering the facts and circumstances of the case. This Court is certainly conscious about the mental agony underwent by the family of the writ petitioner on account of the serious of happenings took place in the family, more specifically, at the young age, the mind set of the children will get affected on account of the disputes between the father and mother and the broken family created disharmony. However, certain happenings and incidents took place in the families are to be treated as personally connected and further it is for the Courts to consider the legal principles while deciding the cases more specifically in the matter of compassionate

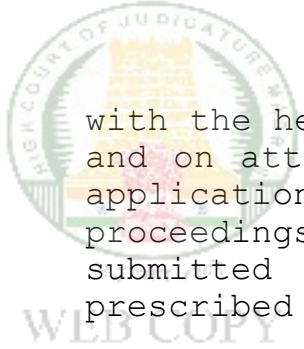
10. The compassionate appointment is a scheme and is not an Act



or Rule enacted through any Legislation. Compassionate appointment is a concession shown by the Government for the benefit of its employees. Compassionate appointment is a special scheme formulated providing an additional benefit for the welfare of the family of the Government employees, more specifically, in case of death, while in service.

11. The scheme of compassionate appointment has got its own terms and conditions. In every case, where such schemes are announced by the employers, for instance, the Special voluntary retirement scheme, Golden handshake retirement scheme or any other scheme, the terms and conditions are also formulated along with the scheme itself. Thus, it is for the authorities to follow the same scrupulously. The State and the Union are announcing various special schemes and concessions for the benefit of the Government employees. The question arises, whether the Constitutional Courts, can travel beyond the scope of the terms and conditions of the scheme and provide certain reliefs to the claimants in violation of the scheme itself. The second question would be that, in the event of deviating or diluting the terms and conditions of such schemes by the Courts, whether the constitutional scheme, constitutional mandates and its prospective are taken care of by the Courts or not?. Third question would be the principles of equity certainly to be adhered by the Courts by adopting the pragmatic approach. While, exercising the power of equity in certain cases, equally the Courts are bound to consider the plight of large number of citizens, who all are aspiring to secure public employment. Their constitutional rights for equal opportunities also deserves to be protected by the Courts. Thus, these questions are also to be certainly answered by the Courts. Undoubtedly, the cases of compassionate appointment are to be viewed compassionately. However, while adopting pragmatic approach in this nature of cases, the Courts are equally bound to consider the constitutional principles. If half of the public posts are filled up through compassionate appointment, then certainly the same will cause not only injustice but will amount to infringement of constitutional rights of large sector of educated youths of this great nation, who all are boiling their midnight lamps and preparing to succeed in the competitive examination to secure public employment through an open competitive process. The scheme of compassionate appointment prescribes no merit assessment or examination or otherwise and public employment is provided on mere submission of an application. Thus, it is certainly a special scheme. No doubt that one family may have certain deep grievances and problems and being in need of an employment. However, millions of people, who are aspiring for public employment also have to be considered by the Constitutional Courts, in view of the fact that the equality clause enshrined in the Constitution, cannot be diluted or can be tampered with.

12. In the case on hand, the only ground raised by the petitioner is that the writ petitioner was a minor at the time of the death of the deceased employee and she pursued her studies only

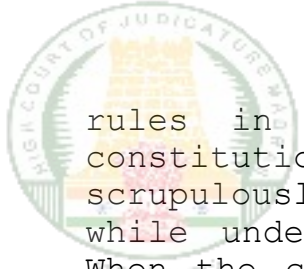


with the help of the maternal uncle. After the completion of studies and on attaining the age of majority, the petitioner submitted the application on 11.07.2011. However, the same was rejected in proceedings dated 17.04.2013 by stating that the application was submitted beyond the prescribed period of 3 years, which is prescribed under the scheme of compassionate appointment.

13. Under these circumstances, the learned Senior Counsel made an attempt to convince this Court by stating that the Courts should not take a serious view of such delay occurred, on account of certain incidents took place in the family. Certain incidents took place in the family also to be taken into account for the purpose of dispensing with the delay caused for filing the application seeking compassionate appointment.

14. At the outset the learned Senior Counsel is of the considered opinion that the delay should be condoned for all reasons. This Court, though able to appreciate the manner in which the case was presented by the learned Senior Counsel, is unable to accept the principles mooted out. The factual circumstances enumerated by the learned Senior counsel is certainly appealing to the Court. However, the Court cannot be carried away with such misplaced sympathy beyond the legal principles. Based on certain misplaced sympathy or based on certain events took place in one family of this great nation cannot be a factor for granting the relief as such sought for. While granting relief, it is the duty of the Constitutional Courts to see that the legal principles are also equally followed. Undoubtedly the principles of equity to be considered. Then the question arises to whom and under what circumstances?. The scheme of compassionate appointment is to mitigate the indigent circumstances arising on account of the sudden demise of the Government employee. In the case on hand, the writ petitioner would have received the pension till she attained the age of 21 years. During the relevant point of time family pension granted to the writ petitioner certainly ought to have been given relief, at least to pursue her school studies. May that it be, this Court is not inclined to go into those minute details, in respect of the expenditure took place in the family or in respect of the education underwent by the writ petitioner. Submitting an application seeking compassionate appointment beyond the period of 3 years, was well adjudicated by the Hon'ble Division Bench of this Court, in the case of, the **Inspector General of Prisons Vs P. Marimuthu**, reported in **2016 (5) CTC 125**. The Division Bench has considered the judgment delivered by the Hon'ble Supreme Court of India, in respect of the scheme of compassionate appointment. The scope of compassionate appointment was also adjudicated elaborately by the Hon'ble Division Bench.

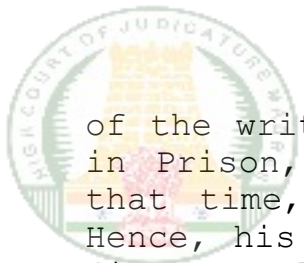
15. The scheme remains only as a concession. The legal principle is that compassionate appointment can never be claimed as a matter of right. All appointments to the public post are to be made only under the constitutional scheme and by following the recruitment



rules in force. Equal opportunity in public employment is a constitutional mandate. The equal opportunity has to be followed scrupulously by the State as well as by the Competent Authorities, while undertaking the process of selection to public employment. When the constitutional perception is to provide equal opportunity to all of the citizens of this great nation for securing public employment, the scope of the scheme cannot be enlarged or the conditions stipulated therein cannot be diluted even by the Courts. Dilution of the terms and conditions of a special scheme are resultantly denial of equal opportunity to the citizens of this great nation. Thus, this Court is of an opinion that the terms and conditions stipulated in the scheme of compassionate appointment are to be followed scrupulously, so as to achieve the object thereon. The very purpose and object of the scheme is to provide public appointment in order to mitigate the indigent circumstances arising on account of the sudden demise of the Government employee, the delay in submitting the application should be construed as, the indigent circumstances arose stands vanished, so also the application once submitted by the family of the deceased employee, the competent authorities has to consider and take a decision within a reasonable period and if appointments are to be provided, the same will have to be provided within a reasonable period of 3 years or at least in 5 years.

16. In such cases of delay the factual inference has to be drawn, since the scheme itself is a concession. When an application is received beyond the prescribed period of 3 years, the factual inference drawn by the Courts is that indigent circumstances arose on account of the sudden demise of the deceased employee, vanished. Undoubtedly, in the case on hand, the learned Senior Counsel urged this Court that maternal uncle of the writ petitioner had taken care of the children. However this Court is able to understand the mental agony and the factual circumstances are to be taken note of that somebody had taken care of them and the children were taken care of by the maternal uncle, will not entitle the writ petitioner to submit an application beyond the period of time limit prescribed. No doubt during the relevant point of time the writ petitioner was a minor, however, the scheme being a concession has to be restricted, so as to maintain the equality clause enshrined under the Constitution. Restriction of such schemes are certainly imminent, in order to maintain the constitutional perception, if such schemes are allowed to be enlarged or expanded by diluting the terms and conditions or by introducing new scope by the State, then certainly such schemes are unconstitutional. At the outset, this Court is of the considered opinion that the scheme of compassionate appointment has to be certainly restricted and it should not extend its limit, so as to deprive equal opportunity to the millions of people who are aspiring for public employment.

17. In the case of, ***the Inspector General of Prisons, Tiruchirappalli Vs. P. Marimuthu***, reported in **2016 (5) CTC 125**, the Hon'ble Division Bench has categorically enumerated that the mother



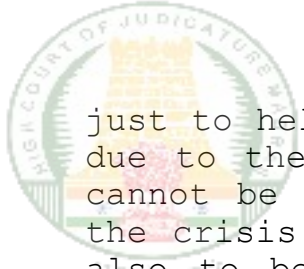
of the writ petitioner in that case was working as a Superintendent in Prison, Tiruchirappalli. On 30.03.1998 she died in harness, at that time, the writ petitioner was a minor aged about 16 years. Hence, his grandmother has made an application on 30.09.2000 to the first appellant seeking for assistance on compassionate ground. Vide communication dated 22.07.2007, the grandmother of the writ petitioner was instructed to produce documents such as legal heir certificate, fitness certificate, conduct certificate etc.,. Thereafter, vide order dated 01.12.2008, the request of the petitioner's grandmother was rejected. The facts of that case also certainly warrants certain consideration, when the Hon'ble Division Bench has gone into the legal principles settled by the Hon'ble Supreme Court of India. This Court is aware that every application submitted seeking appointment on compassionate grounds is certainly sympathetic and the families are deserving appointment. This Court is able to understand that the employee who died in harness, his family will be in distress and the family will be in penurious circumstances. All these factors are to be considered within a reasonable period of time and the decision has to be taken. Even the application itself was filed beyond the period of limitation, then categorical inference are to be drawn, in respect of granting relief of compassionate appointment. In the case of Inspector General cited supra, it is relevant to extract the following paragraphs.

18. This Court is of an opinion that consideration for appointment on compassionate ground is to be construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore does not create a vested right in favour of the claimant. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. A compassionate appointment is justified when it is granted to provide immediate succor to the deceased employee. Mere death of a Government employee in his harness, it 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 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 of the deceased employee.

19. The concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

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20. The philosophy behind giving compassionate appointment is



just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.

21. It is pertinent to note the fact that in a liberalized world as of today, there are plenty of avenues of employment available to the general public. Most of the people are not entirely dependent on the income of a single member of the family. Keeping this new social structure in mind, it would be seemingly right for the Courts to ensure that there is no abuse of the scheme of compassionate appointment either by the employer or by the applicant/claimant.

22. The million dollar question is 'Whether offering 'appointment' on compassionate ground (i.e., sympathy) is the only option /solution to mitigate 'hardship and distress of the family of an employee dying in-harness? The answer is an emphatic 'No'. Firstly, the Rules, as such, contain no provision to ensure that the dependent who gets appointment shall continue to maintain other dependents.

23. A 'welfare state' like ours is free to initiate effective welfare scheme/s- and no one will be in a position to oppose. It is well settled that sympathy cannot be allowed to override statutory or Constitutional provisions, particularly when it is question of the question of Welfare of the entire society and /or question of Governance. State like ours is free to wed the 'solemn object' to serve the society at large, purely according to the mandate under the Constitution of India. State cannot be allowed to look after 'welfare' of its own employees and their families alone.

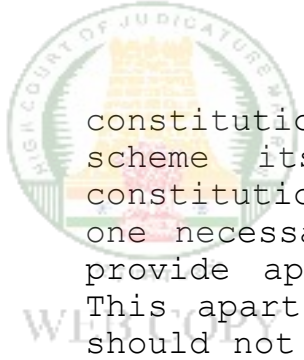
24. In this view of the matter, this Court has to examine the scope of the scheme. The scheme being an exception, the authorities competent has to implement it in its strict terms. Equal opportunity in a public employment is a Constitution mandate.

25. All the recruitment process under the rules are made by the Competent Authorities by implementing the rules of reservation under the Constitution of India. This apart the regular competitive process has got a method of screening the candidates on merits even for the reserved categories. These two aspects are vital in regular recruitment process:

- First is adherence of the Rules of Reservation under the Constitution of India;
- Second is the comparative merit amongst the candidates who are participating in the regular open competitive process.

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26. In case of compassionate appointments, no such



constitutional mandated requirements have been followed. Thus, very scheme itself is an exception and not in accord with the constitutional scheme. Compassionate appointment scheme as a special one necessarily to be restricted to the extent possible, so as to provide appointment only to the genuine and warranting families. This apart, the over all strength of the compassionate appointees should not exceed more than the restricted level and if such a kind of special appointments are increased in the public posts, this Court is of the view that the efficiency level in the public administration will certainly be affected.

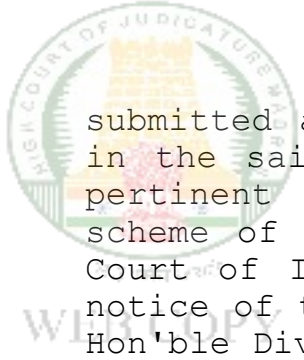
27. In respect of the Rules of Reservation, the same has not been followed in compassionate appointment. Thus large number of compassionate appointments will have certain implication on the Rules of Reservation and the same will certainly have an impact on the Constitution of India, more specifically, on the principles of reservation. In respect of the merit aspect, no competitive examination or interview are conducted for compassionate appointees. Thus the very capability of the candidates in performing the administrative duties itself will be in question. Certain amount of merit assessment is certainly required for appointing a candidate in any public posts.

28. Thus, the concept of compassionate appointment itself is to be reconsidered by the Government and it should be restricted so as to provide appointment only to the legal heirs of the deceased in genuine circumstances. Otherwise, the scheme of compassionate appointment will have a negative impacts on the good governance and further, it will affect the chances of the meritorious candidates, who can participate in the public administration in the better manner.

29. Rules of Reservation being a constitutional mandate any scheme violating the same has to be implemented cautiously and restrictedly. Thus, genuineness of the claim made by the person on compassionate grounds to be strictly in accordance with the terms and conditions and further, the State cannot be going on extending the scope of compassionate appointment so as to dilute the principles of reservation under the Constitution.

30. Such being the scope of the scheme, Courts are also to be cautious, while extending the benefit of compassionate appointment in favour of the legal heirs of the deceased employee and the legal presumption in this regard is that the indigent circumstances certainly vanishes after a lapse of long years.

31. The learned counsel appearing for the writ petitioner in this regard relied on the orders passed by the Hon'ble Division Bench in Writ Appeal No.205 of 2017 on 15.09.2017. The Hon'ble Division Bench in a case, where the deceased employee died on 28.08.1986, held that the legal heirs who was aged about 10 years at the time of death of the employee, on attaining the majority,



submitted an application on 11.12.1995. The Hon'ble Division Bench in the said case allowed the claim of the writ petitioner. It is pertinent to note that the legal principles in relation to the scheme of compassionate appointment settled by the Hon'ble Supreme Court of India in various judgments have not been brought to the notice of the Hon'ble Division Bench. Thus, the above said case the Hon'ble Division Bench has dismissed the appeal filed by the Chennai Metropolitan Water Supply and Sewerage Board on the facts of the case. If the legal principles are not discussed or settled in an order passed in appeal, the same need not be followed in a routine manner.

32. The Judicial discipline require that all the Courts have to follow the legal principles and the judgments delivered by the higher forum. So also this Court has to follow the legal precedents laid down both by the Hon'ble Division Bench, Full Bench and the Hon'ble Supreme Court of India. However, a fine distinction is to be drawn between the ''orders'' and the ''judgments'' passed by the Constitutional Courts. If any order is passed based on certain factual circumstances or by showing some leniency or sympathy, such orders need not be followed. Contrarily, if the legal principles and the law relating to the particular subject has been settled by the Hon'ble Supreme Court, certainly this Court is bound to follow the legal principles formulated and settled by the Hon'ble Supreme Court of India.

1. Further, the Advanced Law Lexicon provides the meaning for Judgment and Order, " An order is a decision made during the progress of the cause, either prior or subsequent to final judgment, settling some point of practice or some point collateral to the main issue presented by the pleadings, and necessary to be disposed of before such issue can be passed upon by the Court, or necessary to be determined in carrying into execution of the final judgment.

33. An order is the mandate or determination of the Court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings and it has not the qualities or consequence of a judgment".

34. "Judgment" is a decision which affects the merits of the question between the parties by determining some right of liability, and does not include a mere formal order, or an order regulating the procedure in a suit.

35. Judgment is a faculty of deciding the matter with wisdom, truly, legally, skillfully, or accurately. Final judgments are such as one put an end to the action by determining the right and fixing the amount in dispute.

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36. In respect of judgment, discretion, prudence.



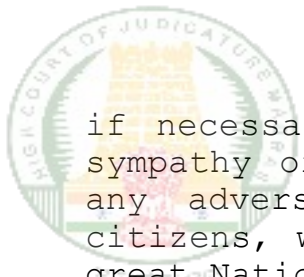
Judgment acts by a fixed rule; it admits of no question or variation; discretion acts according to circumstances and is its own rule. Judgment determines in the choice of what is good; discretion sometimes only guards against error or direct mistakes; it chooses what is nearest to the truth. Judgment requires knowledge and actual experience; discretion requires reflection and consideration; a general exercise is judgment in the disposition of his army, and in the mode of attack; whilst it is following the rules of military or it exercise its discretion in the choice of officers of different posts, in the in the treatment of men, in its negotiation with its enemy and various other measures which depend upon contingencies."

37. The learned counsel appearing on behalf of the writ petitioner repeatedly emphasized that the Hon'ble Division Bench has allowed the writ appeal on 15.09.2017 in W.A.No.205 of 2017, and therefore, this Court also should allow the claim of the writ petitioner in this writ petition. However, this Court has to follow the legal principles settled by the Hon'ble Supreme Court of India in relation to the scheme of compassionate appointment.

38. Yet another judgment also is brought to the knowledge of this Court by the learned counsel appearing for the writ petitioner passed in W.A.No.44 of 2016 on 20.10.2016. In this case also the application was submitted on 29.04.2002 seeking compassionate appointment of the deceased employee, who died on 02.01.1995. However, the Hon'ble Division Bench has not discussed and adjudicated the entire legal principles with regard to the scheme of compassionate appointment, contrarily the order was passed based on factual aspects.

39. The Hon'ble Supreme Court in the matter of compassionate appointment has rendered a judgment setting out the principles, the guidelines and the scope of providing appointment on compassionate ground. Compassionate ground being an exception to that of the general recruitment, the same should be provided with all caution taking note of the fact that compassionate appointment will certainly deprive the eligible meritorious youths and citizens of the country to get public employment. When the Courts are providing an exceptional scheme of compassionate appointment to the individual, it is equally relevant to keep in mind that such facilities provided should not affect the rights of other citizens, who are otherwise qualified, meritorious and aspiring to participate in the open competitive process. The granting of relief, if it affects the Constitutional rights of other citizens, then the Courts must be slow in granting such relief.

40. The consequences, impacts and the denial of rights to other citizens are also to be considered while extending relief under such an exceptional scheme of compassionate appointment. It is not the case as if the Courts should stretch off the scope of compassionate appointment based on an unwarranted sympathy or leniency. No doubt, the Court of Justice has to consider the factual circumstances and



if necessary, certain relief can be provided. However, any such sympathy or leniency shown to a particular person should not have any adverse effect of affecting the rights of other eligible citizens, who are waiting and longing for public employment in this great Nation.

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41. Thus, this Court is of the view that a striking balance ought to have been adopted in such circumstances and Court in its wisdom has to analyze the possible direct and indirect impacts in this regard, in order to provide equal opportunity in public employment to all the citizens. The Courts are bound to borne in mind that equality clause also to be weighed before stretching the scope of such an exceptional scheme of compassionate appointment. Thus, this Court cannot consider the orders produced by the learned counsel for the writ petitioner and this Court has to follow legal principles and the precedents settled by another Division Bench of this Court in the case of **Inspector General of Prisons Vs. Marimuthu (2016 5 CTC 125)** and all other judgments of the Hon'ble Supreme Court of India in this regard.

42. The learned counsel appearing on behalf of the writ petitioner cited the Judgment of the Hon'ble Supreme Court of India in the case of **Vijaya Ukarda Athor (Athawale) Vs. State of Maharashtra and Others** reported in **[(2015) 3 Supreme Court Cases 399]**. On a reading of the above judgment, the order passed by the High Court in Review Application and in the writ petition are set aside by the Hon'ble Supreme Court of India and the matter was remitted back to the High Court for consideration of the matter afresh. Thus, the Hon'ble Supreme Court left open the issue in respect of the facts and circumstances of the legal principles and directed the High Court to decide the matter afresh. Such a judgment rendered by the Hon'ble Supreme Court in respect of the particular facts and circumstances of that case cannot be considered in respect of the facts of the present writ petition on hand.

1. The Hon'ble Supreme Court time and again emphasized that the facts and circumstances of each case has to be considered and the legal principles are to be considered only with relevant to the facts of the particular case. The above case cited by the learned counsel for the petitioner cannot have any relevance in respect of the facts and circumstances of the present case, since in the above case the Hon'ble Supreme Court remitted the matter back for consideration. For all these reasons, no consideration is required in this writ petition.

43. 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."

44. 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."

45. 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 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 there nullity the main provision by taking away completely the right conferred by the main provision."

46. 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]"

47. 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.

* * * *

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."

48. 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, inference 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."

49. This apart, the Hon'ble Division Bench of this Court in **The Inspector General of Prisons vs. P.Marimuthu {2016 (5) CTC 125}**, in paragraphs 35 to 41, held as follows:

"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 Vs. Bhagwan Singh*, reported in 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 the 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 Administrative Tribunal and taking note of the object behind the grant of special concession of employment assistance on compassionate grounds to provide immediate financial assistance to the family of a Government Servant who dies 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 Vs. Hakim Singh, reported in 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 on compassionate grounds. In the reported case, father of the respondent therein was a Lineman in employment of the Board. He died on 24.8.1974 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 i.e., 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 bread-winner. 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 and 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 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 Ors. [1994 (3) SCR 893], the other in Jadgish Prasad v. State of Bihar and Anr. 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 encouraged, de hors 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 1.10.1986. 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 Vs. The State of Bihar and Others, reported in 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 family in penury and without any means of livelihood: In fact

minor

(v) In Director of Education (Secondary) v. Pushpendra Kumar reported in 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 provision 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*, reported in 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, 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 had coped 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 respondents to the writ petition to create a post to accommodate him"

(vii) In National Hydroelectric Power Corporation and Anr. Vs. Nanak Chand and Anr., reported in 2004 (12) SCC 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 the relief in favour of the respondent/dependent. Setting aside the said 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 v. Somvir Singh, reported in 2007 (4) SCC 778, at Paragraphs 7 and 10, the Hon'ble Apex Court held as follows:

"7. Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters 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 the general rule that recruitment to public services is to be made in a transparent 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 of 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.

10. 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 dehors the scheme. In our considered opinion the claim for 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 may 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 v. 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. The request so made was accepted by the Personal Manager of the Company subject to the approval of the Director of the Company.

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"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 death of the bread winner. An appointment made many years after the death 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 dependants of the deceased employee would be directly in conflict with Articles 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 to 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 sub-serve 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 service. In the facts of the case, the municipal authorities were clearly right 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 v. Niraj Kumar*, 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.



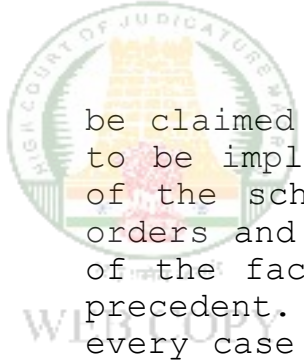
39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders 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."

50. In view of the discussions made above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court of India and by the Hon'ble Division Bench, this Court is of the opinion that the scope of compassionate appointment is to be restricted to the terms and conditions of scheme itself and the same cannot be stretched by the Courts, so as to provide appointment on compassionate ground. This apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court of India in respect of the scheme, the grounds raised in this writ petition deserve no further consideration.

51. All the legal principles in this regard are settled by the Hon'ble Division Bench by this Court and by the Hon'ble Supreme Court of India. The other judgments referred by the learned Senior counsel in respect of the factual circumstances cannot be taken as binding precedent. Even in the case of **Syed Khadim Hussain**, cited supra, the Supreme Court has passed an order considering the peculiar facts and circumstance of the case. On reading of the entire judgment, the factual details were considered by the Hon'ble Supreme Court. But, in the other cases cited supra, the Hon'ble Supreme Court has clearly settled the legal principles by stating that the compassionate appointment is a scheme and the same cannot



be claimed as a matter of right, it is only a concession and it has to be implemented strictly in accordance with terms and conditions of the scheme itself. when such is the principle settled, other orders and judgments cited by the learned senior counsel in respect of the facts and circumstances, cannot be considered as a binding precedent. The Hon'ble Supreme Court has emphasized that each and every case has to be decided on its own facts and circumstances and by applying the legal principles settled in this regard, this Court has considered, the legal principles settled by the Hon'ble Division Bench and Hon'ble Supreme Court of India in the aforesaid given paragraphs. Such being the legal position, the factual circumstances in this case do not deserve any further consideration. In this view of the matter, no further adjudication needs to be undertaken in respect of the grounds raised in this writ petition.

52. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, MP(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Director,
Department of Public Health and Preventive Medicine,
Chennai-06.
2. The Deputy Director of Health Services,
Department of Public Health and Preventive Medicine,
Sivakasi,
Virudhunagar District.
3. The Medical Officer,
Primary Health Centre,
M.Pudhupatti,
Sivakasi Taluk,
Virudhunagar District.

+ 1 CC TO Mr.R.MANIMARAN, ADVOCATE IN SR No. 40176
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 40242

DSS/DSK
TE/KKR/SAR-4 : 13/02/2018 : 35P/6C