

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 06.02.2019
ORDER PRONOUNCED ON : 08.02.2019

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.12422 of 2013

M. Shaheen

... Petitioner

Vs.

1. The Secretary to Government,
Tamil Development Culture HR & CE,
Tourism Information Department,
Chennai - 600 009.
2. The Director of Stationery and Printing,
110, Anna Salai, Chennai - 600 002.
3. The Branch Manager,
Government Branch Press,
Madurai - 625 007.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying in the nature of Writ of Mandamus, to direct the respondents to grant employment in a suitable post to the petitioner in the 2nd respondent Department in the wake of order passed in W.P.No.2924 of 2008 dated 23.09.2010 and issuance of G.O.Rt.No.46, Tamil Development HR & CE Culture, Tourism Department dated 20.02.2012 regularizing the services of the father of the petitioner from 09.03.1984, the date on which he was dismissed and to 15.06.1996, the date on which he died and date of application to seek compassionate ground appointment would naturally fall from date of Writ Petition and G.O.Rt.No.46 dated 20.02.2012.

For Petitioner : Mr.C.Sundaramurthy
For Respondents: Mr.Akhil Akbarali
Government Advocate

O R D E R

The instant Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus seeking for appointment on compassionate ground for the petitioner.

Brief facts leading in the instant petition are as follows:-

2. The petitioner's father was appointed as Junior Assistant with the Director of Stationery and Printing, Chennai. He was dismissed from service on 09.03.1984. He has challenged the order of dismissal before the Principal Labour Court, Chennai, in I.D.No.1278 of 1992. The petitioner's father passed away during the pendency of the proceedings in the Labour Court, on 15.06.1996. The legal representatives of the petitioner's father continued to the proceedings. The Labour Court passed an award dated 12.03.1999 awarding 50% of back wages and other attendant benefits.

3. On 09.07.2000, 50% of the back wages, which would come to Rs.75,000/- was distributed to the three legal heirs of the petitioner's father. The petitioner's elder sister filed an application for appointment on compassionate ground on 05.10.2000 and the same has not been decided. The petitioner's mother, thereafter, moved this Court in W.P.No.2924 of 2008 for the following reliefs:-

"Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to quash the impugned order of the first respondent in Government Letter No.33753/STP1/2000/2, Information and Tourism Department, dated 29.03.2001 as communicated in the second respondent's letter dated 18.04.2001 and also to direct the respondents to sanction all attendant benefits, for which, the deceased husband of the petitioner was entitled to including family pension with interest as per Labour Court Award, dated 12.03.1999 from the date of superannuation/retirement or date of death of her husband, whichever is earlier or any other appropriate order or direction, that may deem fit and proper in the facts and circumstances of the case."

4. This Court, by an order dated 23.09.2010, disposed of the Writ Petition by passing the following order:-

"8. A perusal of the impugned order shows that the award passed by the Labour Court was not considered by the respondents in letter and spirit, hence, the impugned order, dated 18.04.2001 passed by the second respondent is set aside and the matter is remitted back to the second respondent for fresh disposal. The second respondent is directed to consider the representation made by the petitioner, according to law, as per the award passed by the Labour

Court. The petitioner is permitted to approach the second respondent, by submitting a written representation along with the copy of this order, within a period of four weeks from the date of receipt of a copy of this order and the second respondent is directed to dispose of the same, according to law, within a period of eight weeks thereafter. Accordingly, this writ petition is disposed of. No order as to costs."

5. The order of this Court has been complied with by passing G.O.Rt.No.46, Tamil Development HR & CE Department, dated 20.02.2012. The petitioner has thereafter, filed an application for appointment on compassionate ground on 13.03.2012, which has been rejected by the order impugned in this Writ Petition on 20.11.2012.

6. Notice was issued on the Writ Petition and the respondents have filed their counter stating that the appointment on compassionate ground cannot be given after 16 years of the death of the petitioner's father and also that as per the scheme for compassionate appointment, the application for appointment on compassionate ground should be made within three years from the death of deceased Government servant. It is also stated that the petitioner's mother was working as a Binder in the same Department and therefore, the family was under no financial crisis.

7. Heard the learned counsel appearing on both sides and perused the materials placed before this Court.

Conclusion:-

8. It is well settled that the appointment on compassionate ground is not a matter of right and the same can be considered only if there is a scheme framed by the Government. It is well settled that the application for compassionate appointment can be considered purely in accordance with the scheme. It is well settled that an appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death of medical invalidation of the breadwinner while in service and the application for compassionate appointment must be made within a reasonable time. Compassionate employment cannot be granted as a matter of course by way of largesse, irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death. Though there are number of judgments on the point, it is apt to quote only one judgment of the Hon'ble Division Bench of this Court in the case of the Inspector General of Prisons, Tiruchirapalli District, Thiruchirapalli, and another Vs. P.Marimuthu [2016 (5) CTC 125]. Relevant portion of the said judgment in paragraph Nos. 32 to 36 read as under:-

32. It is well settled, in a catena of decisions extracted supra, that the scheme of compassionate appointment is to tide over the financial constraint of the family and that the person seeking for employment assistance should make an application to the competent authorities within three years from the date of death of the employee, subject to satisfying the eligibility criteria, for the post to which he seeks for. Reference can also be made to the decision in Steel Authority of India Limited v. Madhusudan Das, (2008) 15 SCC 560, wherein, the Hon'ble Supreme Court has clarified the law relating to compassionate appointments and held that it is only a concession and not a right:

"15. 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 SBI v. Anju Jain, (2008) 8 SCC 475 para 33.)"

33. In State of Gujarat v. Arvindkumar T. Tiwari, reported in (2012) 9 SCC 545, the Hon'ble Supreme Court while examining the scheme, in the matters of compassionate appointment, has made the following observations:

"11. The courts and tribunals do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. v. Dharam Bir (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under: (SCC p. 175, para 31) "31. ... The courts as also the tribunals have no power to override the mandatory provisions of the

Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.

12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of "fair play", "good conscience" and "equity". (Vide State of J&K v. Shiv Ram Sharma (1999)3 SCC 653 and Praveen Singh v. State of Punjab (2000) 8 SCC 633.) "

34. In A.Karthick v. The Government of Tamil Nadu reported in CDJ 2015 MHC 3405, the petitioner's father, working as Irrigation Engineer, died on 04.09.2002, while he was in service. At the time of death of his father, the petitioner was a minor and aged about 12 years. There was a ban between November 2001 to February 2006. He attained majority and made an application for compassionate appointment on 27.07.2009. Thereafter, his mother made a representation on 17.09.2009. The said application was rejected on the ground that it was submitted after seven years, from the date of death of the Government servant. Observing that the

application filed by the petitioner therein, on attaining majority, cannot be treated as a belated application, as the petitioner therein, was a minor, at the time of death of petitioner's father, the court has remitted the matter back to the concerned authority to consider the claim of the petitioner therein, seeking employment assistance on compassionate grounds. With due respect, the question as to whether a minor can make an application for employment assistance has not been specifically framed and answered.

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.

(ii) 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."

(iii) 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 breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

As regards the extended period, on attaining majority, the Hon'ble Supreme Court at paragraph Nos.14 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, dehors the recruitment rules."

15. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 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.

(iv) 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 such a view has been expressed in the very decision cited by the petitioner in Director of Education and Anr. v. Pushpendra Kumar and Ors. (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."

(v) In *Sushma Gosain v. Union of India* reported in 1989 (4) SCC 468, it was observed that in all the claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati v. Union of India* [1991 Supp (2) SCC 689] and *Union of India v. Bhagwan Singh* [1995 (6) SCC 476].

(vi) 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.

(vii) 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"

(viii) 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.

(ix) 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.

(x) 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. The Director (P) , who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after

12 years from the date of death of the employee such an appointment could not have been offered to the so called dependent of the deceased employee. The Supreme Court held that the decision of the employer was in consonance with Umesh Kumar Nagpal's case and the same should not have been interfered with by the High Court.?

(xi) In Local Administration Department v. M.Selvanayagam reported in 2011 AIR SCW 2198, an application was made by the son of the deceased, after 7+ years, from the date of death of his father, who died as a Watchman in Karaikal Municipality on 22.11.1988, leaving behind, his wife and two sons, including the respondent therein. At the time of his death, the respondent therein was aged 11 years. After about 5+ years from the date of his father's death, the respondent therein passed S.S.L.C. examination in April, 1993. Thereafter, for the first time on July, 29, 1993, the respondent's mother therein made an application for his appointment on compassionate grounds. No action was taken on the application, since the respondent therein was still a minor. A learned Single Judge directed the authorities to consider his claim for appointment on compassionate grounds, afresh and to pass an order on his application, within four months, from the date of passing of the order. As the same was not complied with, a contempt proceeding was initiated. The Municipality rejected the respondent's claim therein, for compassionate appointment. Once again, a writ petition was filed and this time, a learned Single Judge rejected the same. The Hon'ble Division Bench, which considered the correctness of the said order, allowed the writ appeal and that the same was challenged before the Hon'ble Apex Court. After considering the scheme of employment assistance on compassionate grounds, at Paragraphs 7 to 9, the Hon'ble Apex Court, held as follows:

"7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering

from anemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganized way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the 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 Singh reported in 2007 (2) SCC 481, an employee died, leaving behind his wife. She made an application to the respondent therein, for appointment of her grandson on compassionate grounds. Thereafter, he was appointed on daily wages and his services were extended from time to time. After a gap of about 15 years, he made an application for his appointment on compassionate grounds on regular basis. Thereafter, wife of the deceased employee, sought for appointment for her son and while claiming so, she also requested cancellation of the respondent's appointment. As her request was rejected, she filed a writ petition, which was dismissed. One of the reasons assigned for dismissal of the writ petition filed by the wife was that at the time of death of the deceased employee, her son was aged one and half years old and that the application was submitted only after attaining majority i.e. after 18 years and therefore, no appointment can be given to the employee's son on compassionate ground. Letters patent appeal was also dismissed by the Hon'ble Division Bench. There were other issues of making a false claim by the grandson. Suo-motu contempt notice was issued. On the above facts and considering the policy of the Government, at Paragraphs 21 and 22, the Hon'ble Supreme Court, held as follows:

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

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

9. The argument of the learned counsel appearing for the petitioner that the period of three years should be calculated only from the date of the order of this Court in W.P.No.2924 of 2008 cannot be accepted. The petitioner's elder sister has already applied for appointment on compassionate ground on 05.10.2000. The petitioner's application is a second

application. This application has been made after 16 years, after the death of her father. The application is, therefore, extremely belated. In any event, the petitioner's mother namely, Khajabegam, was working as Binder in the second respondent Management. The family of the petitioner cannot be said to be having financial crisis. The rejection of the petitioner's claim for appointment on compassionate ground requires no interference.

10. In view of the above discussions, this Writ Petition is dismissed. There shall be no order as to costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Tamil Development Culture HR & CE,
Tourism Information Department,
Chennai - 600 009.
2. The Director of Stationery and Printing,
110, Anna Salai, Chennai - 600 002.
3. The Branch Manager,
Government Branch Press,
Madurai - 625 007.

+1 CC to Mr.C.Sundaamoorthy, Advocate sr 12159.
+1 CC to The Govt. Pleader sr 11862

W.P.No.12422 of 2013

GJII(CO)
SP(18/03/2019)