

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2172 of 2018

CMP No.16844 of 2018

1. The District Collector,
District Collector's Office,
Erode.

2. The Revenue Divisional Officer,
Erode.

3. The Tahsildar,
Perundurai Taluk,
Erode District.

... Appellants

v.

Tmt.Easwari

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 18.12.2017 made in W.P.No.28574 of 2017.

Prayer in W.P.No.28574 of 2017 :

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the first respondent vide proceedings Na.N.K.33063/ 2016/A5 dated 22.8.17 and to quash the same and consequently direct the first respondent to appoint the petitioner on compassionate ground.

For Appellants : Mr.R.Udayakumar
Additional Govt. Pleader

For Respondent : Mr.S.Vijayakumar

J U D G E M E N T

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

Writ appeal is directed against the order made in W.P.No.28574 of 2017 dated 18.12.2017, by which the writ

Court, while allowing the writ petition, directed the 1st appellant herein to provide compassionate appointment to the daughter of the writ petitioner/respondent herein, commensurating with her educational qualification within a period of six weeks from the date of receipt of a copy of the order made in the writ petition.

2. Facts leading to the filing of the instant writ appeal, are as follows:

Respondent / writ petitioner's husband S.Gurusamy, while serving as Village Assistant in Singanallur, Perundurai Taluk, Erode District, died on 01.01.2007, leaving behind the petitioner as a widow, her daughter Geetha along with her father-in-law as surviving legal heirs. Due to the sudden demise of the sole breadwinner in her family, she was unable to tide over the crisis and a timely application was made, seeking compassionate appointment on 05.06.2007. At the time of submitting the said application, the respondent / writ petitioner was aged 47 years, her daughter was a minor aged about 10 years and her father-in-law was also a senior citizen aged about 82 years. Subsequently, her father-in-law also died. The said application was submitted to the District Collector, Erode, 1st appellant herein along with necessary documents, viz., Death Certificate of S.Gurusamy, Legalheirship Certificate issued by the Tahsildar, Perundurai, Nativity Certificate, Community Certificate, Income Certificate, Solvent Certificate issued by the Tahsildar, Perundurai, Certificate [family in poor condition] issued by the Tahsildar, Perundurai. Although the said application was duly acknowledged and received by the 1st appellant, no action was taken. In the meantime, the Respondent/writ petitioner become old and reached the age of 56 years. Knowing pretty well that the petitioner had lost her eligibility for compassionate appointment and in view of the fact that no action was taken by the 1st appellant, for a period of seven long years, she made a fresh application on 08.06.2015, seeking compassionate appointment to her daughter as she had studied 10th standard and also attained majority. While the respondent / writ petitioner was awaiting favourable orders for compassionate appointment, the 1st appellant passed the impugned order dated 22.08.2017 rejecting the application made by the respondent / writ petitioner. Therefore, W.P.No.28574 of 2017, was filed for the following relief

"for issuance of a writ of certiorarified mandamus to call for the records relating to the 1st respondent vide proceedings No.N.K.33063/2016/A5 dated 22.08.2017 and to quash the same and consequently direct the 1st respondent to appoint the petitioner on compassionate ground."

contended that in similar circumstances, a Hon'ble Division Bench of this Court, in an unreported judgment, dated 23.07.2017 passed in W.A.[MD] No.737 of 2013, directed the respondent therein to provide compassionate appointment and also brought to the notice of this Court, the relevant portion which is extracted hereunder:

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

1.Mohanambal V. Director, Land and Survey Department [2011 (2) MLJ 47]

2.J.Jeba Mary V. The Chairman, Tamil Nadu Electricity Board [2011 (3) LLN 405]

3.G.Saravanakumar Vs. The Chairman, Tamil Nadu Electricity Board, Chennai [2011 (2) CWC 83]

4.R.Prasath V. The Secretary, Labour and Employment Dept., Chennai [W.P.No.3078 of 2006 dated 17.06.2010]

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

After analyzing the above said case laws, it was held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who have then not attained majority and subsequently, applied within three years of their attaining majority, the request could be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond three years of death of the father. It is not the case of the respondents that the family of the appellant is not in indigent status as on today."

(iii). Contending that the above observation made by this Court is squarely applicable to the case of the writ petitioner, direction to set aside the impugned order was sought for.

(iv). Opposing the relief sought for, learned counsel for the State has submitted that although the respondent / writ petitioner had made an application on 05.06.2007, immediately after the death of her husband on 01.01.2007 seeking compassionate appointment, before taking up the application for various reasons, namely, due to non

availability of vacancies, the respondent/ writ petitioner made a fresh application on 08.06.2015, seeking compassionate appointment to her daughter, since she became over aged and reached the age of 56 years. As per Rules, the first appellant had rejected the application on the ground that the respondent / writ petitioner cannot alter the request seeking compassionate appointment.

(v). After hearing the learned counsel on either side, writ Court allowed the writ petition vide order dated 18.12.2017, as hereunder.

"6. When the first respondent had kept the application of the petitioner in a cold storage for more than seven long years, in the mean while, due to failure on the part of the first respondent, the widow has turned over aged, the first respondent cannot put the blame on the petitioner. In any event, the daughter of the petitioner had passed S.S.L.C. and also attained majority on the date of making application, i.e., on 08.06.2015, hence the observation of this Court stated supra will squarely apply to the case of the petitioner. Therefore, the impugned order is set aside and the Writ Petition stands allowed and the first respondent is hereby directed to provide compassionate appointment to the petitioner's daughter commensurating to her educational qualification within a period of six weeks from the date of receipt of a copy of this order. No costs."

3. Challenging the abovesaid order, the District Collector, Erode, the Revenue Divisional Officer, Erode and the Tahsildar, Perundurai Taluk, Erode District have filed the instant writ appeal on the following grounds:

(i) Writ Court ought to have noted the fact that Tr. S.Gurusamy, husband of the Respondent / writ petitioner was working as a Village Assistant and he died in harness on 01.01.2007. The respondent/ Writ Petitioner submitted an application to the Tahsildar, Perundurai, 3rd Appellant/ respondent, on 05.06.2007 seeking compassionate appointment for herself. She has merely submitted an application seeking compassionate ground appointment, but she did not submit any required certificates, (i.e.,) Educational Certificates or Certificate of her age proof, Legal heir Certificate of the deceased Government servant, No objection letter or statement obtained from other legal heirs. She did not submit a consolidated certificate from the Tahsildar concerned to prove that her family was in indigent circumstances and she did not produce a certificate to the effect that she has not been remarried. The above certificates are very essential in support of her claim for considering compassionate ground appointment.

(ii) Writ Court failed to note the fact though in the present case, non submission of the above required certificates by the respondent / writ petitioner while submitting the application or on later days is a default on her part.

(iii) Writ Court failed to note the fact that the daughter of the deceased Village Assistant Geetha was only 10 years at the time of her father's demise.

(iv) Writ Court ought to have considered the decision of the Hon'ble Supreme Court of India reported in (2000) 7 SCC 192 in Sanjay Kumar Vs. State of Bihar, wherein, it is held that there cannot be reservation of a vacancy still such time as the applicant becomes a major after a number of years, unless there is some specific provision and based on this judgment, the application made after the period stipulated under the scheme is not maintainable.

(v) Writ Court ought to have considered that the appointment on compassionate grounds is a special mode of recruitment only to overcome the indigent circumstances of the family of the deceased Government Servant and the respondent has no right to seek appointment on compassionate grounds as a matter of right.

(vi) Writ Court ought to have considered the fact that the Respondent/ Petitioner had submitted a fresh application on 09.09.2015 in which she had sought compassionate appointment to her daughter Geetha.

(vii) Writ Court ought to have considered Para 4 of judgement dated 16.08.2017 pronounced by this Court in W.P.No.21665 Of 2017 filed by Mr.Devaraj against the Principal Secretary and others, which states as follows.

"The compassionate appointment is a scheme and not a regular recruitment process. Compassionate appointment can be provided considering the Indigent circumstances of the deceased employee died, while in service. The writ petitioner cannot claim compassionate appointment after a lapse of two decades and the normal presumption is that the indigent circumstances now pleaded in this writ petition vanished.

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."

Further in the above judgment it is also stated that "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"

In the same judgment it has been ordered further as follows:

"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".

Therefore, the appellants are 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 demise of the breadwinner."

(viii) Writ Court ought to have considered the fact in the judgment of this Court dated 16.08.2017 issued in W.P.No. 21665 of 2017, it is observed as follows:

"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 ground 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".

(ix) Writ Court ought to have considered the fact that the applicant Tmt.Eswari had applied for appointment under compassionate ground for herself on 05.06.2007 and later

modified her request and sought appointment to her daughter Selvi.Geetha, after eight years. This cannot be accepted as per the instructions contained in Government Lr.No.11190/Ser (9)-1/07-2 dated 27.06.2007. This is against the orders of this Court and also against the instructions of the Government. Writ Court has not considered the instructions.

(x) Writ Court ought to have considered the fact that the writ petitioner Tmt.Eswari had applied for compassionate ground appointment on 05.06.2007 at her age of 47 years. Writ Court failed to note that the age limit for a widow applicant for compassionate ground appointment had been risen from 40 to 50 as per G.O.Ms. No.20 Labor and Employment (Q1) Department dated:19.01.1998. In the instant case, Tmt.Eswari, the writ petitioner has not filed her application with the required educational qualification certificates when she applied on 05.06.2007 at her age of 47 years.

(xi) Writ Court failed to note that if the respondent is granted with an appointment on compassionate grounds on the basis of this case, it will open the flood gate, to similarly placed persons.

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

5. Husband of the respondent died on 01.01.2007, leaving behind the respondent and her daughter, Geetha. At the time of death, respondent was aged about 47 years and daughter was a minor, aged about 10 years. Initially, the respondent submitted an application, dated 05.06.2007, to the Tahsildar, Perundurai, the 3rd respondent herein. Though the respondent has claimed that along with her application, dated 05.06.2007, she has submitted all the necessary certificates, appellants have refuted the same.

6. Though the respondent had a legal right to be enforced against the respondents for compassionate appointment, in terms of the scheme, to provide employment assistance to the legal heir of a government servant, who died in harness, question to be considered is that if the competent authorities have not passed any orders, on the application, does the legal heir has any right to seek for employment assistance to any other person, son or daughter, on the latter, attaining majority. True that the appellants have not passed any orders. When her application, dated 05.06.2007, was not taken up for consideration, the respondent ought to have approached this Court, seeking for a writ of Mandamus, to consider her application. She has not chosen to do so.

7. But the respondent has submitted a fresh application on 08.06.2015, after eight years from the date of death of her husband. This time, she sought for appointment to her daughter, Geetha, who has attained majority and studied upto 10th Standard. Respondent's daughter has made a separate application, dated 08.08.2017, to the Revenue Divisional Officer. At this juncture, it is relevant to consider, as to whether, a request for change of employment assistance can be made,

From
G.Geetha,
D/o. (Late) .Gurusamy,
Nathakaattuvalasu,
Singanallur 'A' Village,
Perundurai Taluk.

To
Revenue Divisional Officer,
Revenue Divisional Office
Erode.
Madam,

I .G.Geetha legal heir of the deceased government employee S.Gurusamy. He worked as Village Assistant at Singanallur 'A' Village passed away on 01.01.2007 while he is in Government Service. I kindly request you to provide me an appointment in Compassionate Grounds. I wish to state that I have passed 10th Standard.

Yours faithfully,
(G. Geetha)

Date 08.08.2017

8. Joint Commissioner, Revenue Administration, Chennai, vide Lr.No.IC3/40889/07, dated 09.07.2007, addressed to the District Collector, Cuddalore District, which is extracted hereunder:

Revenue Administration, Disaster Management
and Mitigation Department

From	To
Thiru.T.Rajendran, I.A.S. Joint Commissioner, Revenue Administration, Chepauk, Chennai-05	The District Collector, Cuddalore District, Cuddalore - (Registered Post)

Lr.No. IC3/40889/07 Date: 09.07.2007.

Sir,

Sub: Compassionate Ground Appointment -
Cuddalore District- Tmt.Nagaboosham- W/o. Deceased
Village Assistant- Ramalingam-. sought
Compassionate Ground Appointment for her elder
daughter Dhanalakshmi- changed the obligation for
her younger daughter Priyadharshini- Reg

Ref: Your Letter No.A1/12081/02 Date:
29.05.2007

Kind attention is invited for the reference cited.
2. In the Government Letter No.11190/Ser 9-1/07-2,
date:07.06.2007, it is instructed as follows:

"Tmt.Kaliyammai @ Jegatham, the wife of
deceased government servant of Kanyakumari
Revenue unit lyyappan Pillai has applied
for Compassionate Ground appointment on
18.01.1999, and then after a lapse of some
years changed her obligation , seeking
compassionate ground appointment for her
son. This change of obligation should not
be accepted. The Compassionate Ground
appointment should only to be given to the
person for whom it is applied for'.

Hence, as per the above instructions in the Para.2,
it is instructed to reject the application made by
Tmt.R.Nagabooshanam, W/o. Ramalingam, the deceased
Government Servant of Cuddalore Revenue Unit.

Yours faithfully,
Sd/- S.Dharmarasan,
Assistant Commissioner-4,
For Joint Commissioner (RA)."

9. Taking note of the instructions of the abovesaid
Government Letter, dated 27.06.2007, communicated to all the
District Collector, Erode, the 1st appellant herein, vide
order, dated 22.08.2017, has rejected the request of the
respondent, as hereunder:

Ref.No.33063/2016/A5 District Collector office,
Erode District, Erode.

Date:22.08.2017

II Memo II

Sub: Compassionate Ground Appointment-

Village

<https://hcservices.ecourts.gov.in/hcservices/>

Administration - Peruindurai Taluk -

Singanallur village - Village Assistant - Gurusamy .S- died on 01.01.2007- Compassionate Ground Appointment sought for her daughter Selvi.Geetha-Regarding.

Ref: 1.Tahsildar, Perundurai
Ref.No.12568/2015/A4

Date:19.07.2015

2. Revenue Divisional Officer, Erode

Ref. No.4277/2016/A2 Date:07.11.2016

The Proposals cited in reference 1 and 2 for Compassionate Ground Appointment for daughter of the demised Government Servant, S.Gurusamy, who served as Village assistant, at Singanallur Village, Perundurai Taluk are carefully examined.

2. The application for Compassionate Ground Appointment was made by Tmt. Eswari, W/o. S.Gurusamy on 05.06.2007. But the above obligation might be rejected, since the petitioner did not possess the appropriate educational Qualification at that time. In this circumstance, again a petition was made by Tmt.Eswari, W/o. Gurusamy in which she sought compassionate ground appointment for her daughter Selvi.Geetha.

3. In the Government Order No.20, Labour and Employment (Q-1) Department dated: 19.01.1998, it is ordered that The Maximum age limit of Widow and Widower for Compassionate Ground appointment is raised from 40 to 50". In this situation, Tmt. Eswari had crossed 50 years. So she is not eligible for Compassionate Ground Appointment. Further in the Government Order No.112, Personnel and Administrative Reforms dep, date: 23.08.2005, it is ordered that 'Persons who completed 18 years of age should be considered for Compassionate Ground appointment'. Hence, Selvi.Geetha who has not completed 18 years of age at that time.so she is not eligible for Compassionate Ground Appointment.

4. In the Government Letter No.11190/Service 9-1/07-2 date: 27.06.2007, 'Once the application for Compassionate Ground appointment was made for one person, the obligation cannot be changed for another person'. Hence the petitioner's obligation is rejected as per Government Rules.

Sd/-S.Prabhakar,
District Collector,
Erode.

/True Copy/By Order/

For District Collector.

To
Tmt. Eswari,
W/o. (Late) S. Gurusamy,
Nathakaattuvalasu,
Singanallur 'A' Village,
Perundurai Taluk.

Copy: Tahsildar, Perundurai.
Copy: Revenue Divisional Officer, Erode.

10. Being aggrieved, the respondent has filed W.P.No.28574 of 2017. By observing that the 1st appellant has kept the application of the respondent in cold storage for seven long years, and due to the said failure, respondent had become overaged and in any event, daughter of the respondent has attained majority, writ Court set aside the order of rejection, dated 22.08.2017, and directed the appellants to provide employment assistance. As rightly contended by the learned counsel for the appellants, Government instructions, dated 27.06.2007, has not been considered by the writ Court.

11. As stated supra, in 2007, the respondent had a right to seek for employment assistance, either to herself or any one of the legal heirs, provided he/she satisfy the age to secure appointment in government service. At that time, daughter of the respondent was aged only 10 years. Respondent has not approached this Court to enforce her legal right, on the basis of the scheme. She may be still in indigent circumstances. Therefore, in 2007, she cannot seek for employment assistance to her daughter.

12. 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.)"

13. 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

14. 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 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."

(iv) 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].

(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. 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."

(x) In Local Administration Department v. M.Selvanayagam reported in 2011 AIR SCW 2198, an application was made by the son of the deceased, after 7½ 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 5½ 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."

15. 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 LR's. and Ors., (2005) 12 SCC 1]"

16. Decisions quoted supra, squarely apply to the facts of this case. In the light of the discussion and decisions, we are of the view that the appellants made out a case for interference with the order impugned. Order made in W.P.No.28574 of 2017, dated 18.12.2017, is set aside.

17. Hence, the writ appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ars/skm

+1 cc to Government Pleader Sr.No. 46170

W.A.No.2172 of 2018
CMP No.16844 of 2018