



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2019

CORAM:

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**THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD**

W.A.[MD]No.94 of 2015 and
M.P.(MD).No.1 of 2015

1. The Senior Divisional Manager,
Life Insurance Corporation of India,
Jeevan Prakash Bridge Station Road,
Sellur, Madurai - 625 002.
Madurai District.

2. The Branch Manager,
Life Insurance Corporation of India,
Thiruppathur Branch,
Pudukkottai District.

... Appellants/Respondents

Vs.

A.Rameesraja

... Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 13.11.2014 passed in W.P.(MD)No.7069 of 2011 by a learned Single Judge of this Court.

Prayer in WP(MD)No.7069 of 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, by calling for the entire records pertaining to the impugned letter Ref: P & IR passed by the 1st respondent, dated 08.03.2011 and quash the same as illegal and consequently directing the 1st respondent to appoint the Petitioner as Record Clerk or to give any suitable post under the compassionate ground.

For appellants	: Mr.C.Godwin
For respondent	: Mr.N.Balakrishnan

JUDGMENT

**[Judgment of the Court was delivered by
SUBRAMONIUM PRASAD, J]**

The Life Insurance Corporation of India challenges the order
<https://hcservices.ecourts.gov.in/hcservices/>



dated 13.11.2014 in W.P.(MD).No.7069 of 2011, whereby the learned Single Judge has directed appointment to the petitioner on compassionate ground.

2.The undisputed facts, in brief, are that the petitioner's father was working as Record Clerk with the appellants. He died in harness at the age of 46 on 03.06.2006, leaving behind his wife and the petitioner, who was a minor at the time of death of his father. The petitioner's mother moved an application for compassionate appointment for the petitioner when he was a minor. That application was not considered. This was followed by several representations for appointment of the petitioner. The petitioner attained majority on 18.10.2009 and on attaining the majority, he filed an application for appointment on compassionate basis. The said application was rejected on the ground that the application was made after three years of the death of his father. The respondent / petitioner challenged the rejection of the application in the writ petition.

3. Learned Single Judge allowed the writ petition stating that since the earlier two applications have not been rejected, the application made by the petitioner must be read in continuation of the earlier two applications made by his mother. The Single Judge was of the opinion that if it is treated as a continuation of the earlier application, then the application could be within the prescribed time limit. Learned Single Judge also placed reliance on a Division Bench judgment in the case of **A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board**, reported in **2013(2) CWC 758**. It is this order which grants appointment order to the petitioner which is under challenge in the instant appeal.

4. It is well settled that appointment on compassionate basis is an exception to Article 14 of the Constitution of India. It is not a matter of right. The appointment can be made only on the basis of a scheme for compassionate appointment. The compassionate appointment is being provided to the family to get over from the financial circumstances to which the family is put on account of the death of the sole breadwinner of the family.

5. The Life Insurance Corporation has got a scheme for appointment on compassionate basis. Rule 21 of the LIC Recruitment (of Class III and Class IV Staff) Instructions, 1993, reads as under:

21.Relaxation in favour of new relatives of an employee who dies while in service or retires at least five years prior to the death of superannuation:

(I) There shall be relaxation in upper age limits and educational qualifications in favour of near relatives as defined in (ii) below, of an



employee who dies while in service as prescribed in Annexure-III hereto.

Where an employee is retired prematurely under Regulations 19(3) of the (Staff) Regulations, on health grounds or on being incapacitated for continuous service at least five years before the date of his superannuation, compassionate appointments may be made of one of the relatives mentioned in (ii) below subject to the candidate satisfying all the requirements as prescribed for appointments in the event of death while in service. Such appointment may also be made where an employee is retired prematurely at least five years before the date of his superannuation not for any misconduct but for poor performance.

(ii) Such relaxations shall be admissible only in favour of a spouse, son or unmarried daughters of the employee.

(iii) The relaxations shall be admissible only where none of the members of the family - spouse, son or unmarried daughter - is gainfully employed. However, if the widow is already employed elsewhere in Private Sector she will be allowed to take up a job in the Corporation in Class III or Class IV Cadre commensurate with her qualifications if she opts for the same.

(iv) The relaxations shall be admissible either to the spouse or to one of the children as specified.

(v) The relaxations shall be admissible only if a request is received from the relative who satisfies the conditions of minimum educational qualifications, age etc., as prescribed, within a period of one year from the date of death of the employee or early retirement as specified.

Provided that the time limit of one year may be extended in the cases specified below:

a) A widow may be allowed upto 5 years from the date of death of her husband to secure the prescribed qualification for appointment to Class III post in the Corporation,

b) A major son or unmarried daughter who satisfies the qualification for appointment to Class IV Post, may be allowed upto two years from the date of death to secure prescribed qualification for a Class III post if he/she so desires,

c) upto three years from the date of death where all the children are minor.

(vi) The mode of recruitment as prescribed in

<https://hcservices.ecourts.gov.in/hcservices> supra need not be followed for appointments



under Paragraph 21.

(vii) All such appointments shall be subjected to the existence of a sanctioned vacancy.

(viii) There shall be no -re-requirement written test for the posts of Assistant, Stenographer, Typist, Telephone Operator and Record Clerk. However, for appointment to the posts of Stenographers, Typists and Telephone Operators, the eligible candidates shall qualify in the trade test as prescribed.

(ix) There shall be no application fee payable.

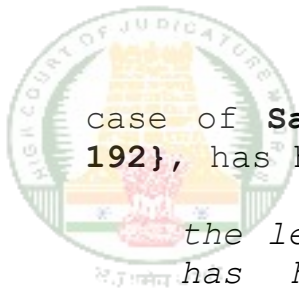
(x) The relative of the employee, selected for the post of Assistant shall not be required to undergo training as prescribed.

(xi) Subject to the relaxations as provided herein, the selection of the relative of the employee, will be subjected to his/her being found suitable for the post in the interview by the selection committee and in the medical examination. All such appointments shall be at the minimum of the scale applicable to the post. On appointment he/she will be on probation as prescribed under the (Staff) Regulations and confirmation will be subjected to the satisfactory work record."

6. A perusal of the Rule would show that in case an employee dies leaving behind minor children, then the minor child seek compassionate appointment within three years from the date of death of the employee. In the present case, the employee passed away on 03.06.2006 and the application made by the petitioner on 18.10.2009 is after a period of three years. The petitioner, therefore, is not entitled to the benefit of Rule 21.

7. Reliance placed by the learned Single Judge in the case of A.Kamatchi (cited supra), is misplaced. In the said case, the wife of the deceased had moved an application in her name, which she was entitled to, under the Rules and the said application was not considered. It is in these circumstances the learned Division Bench held that the application made by the son who attained majority was to be treated as continuation of the earlier application which had not been considered by the Department. The present case is distinguishable on facts. In the present case, the petitioner's mother had filed an application for appointment of the petitioner, who was at that point of time not eligible to be appointed for the reason that he was a minor. The petitioner, therefore, in the present circumstances, could not have filed an application in his own name, after the expiry of the period of three years, which is beyond the scope of the scheme.

<https://hcservices.ecourts.gov.in/hcservices/> In similar circumstances, the Hon'ble Supreme Court in the



case of **Sanjay Kumar vs. State of Bihar and Others {(2000) 7 SCC 192}**, has held in paragraph-3 of its judgment, 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."

9. In the case of **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."

10. In the case of **State of Manipur vs. Md. Rajaodin {(2003) 7 SCC 511}**, 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 (Secondary) 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."

11. In the case of **Steel Authority of India Limited vs. Madhusudan Das and Others (2008) 15 SCC 560**, 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**]"



12. In view of the above, the judgment of the learned Single Judge cannot be sustained. This appeal is accordingly allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

+1 CC to M/s.C.GODWIN, Advocate (SR-105747[F] dated 18/12/2019)

GCG/ARUL

TE : 06/01/2020 : 7P/2C

JUDGMENT MADE IN
W.A.[MD]No.94 of 2015
18.12.2019