

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
07.12.2020	09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.25231 OF 2014

M.Vigneswaran

..Petitioner

- Vs -

1. Government of Tamil Nadu
rep. By its Prl. Secretary to Govt.
Home (Police) Department
Secretariat, Fort St. George
Chennai 600 009.

2. The Director General of Police
Mylapore, Chennai 600 004.

3. The Superintendent of Police
Pudukottai District, Pudukottai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records from the 3rd respondent in Proceedings Na.Ka.No.L3/9395/2006 dated 20.08.09 and in his another proceedings Na.Ka.No.L3/32286/13 dated 14.01.2014, quash the same and issue consequential directions to the respondents to appoint the petitioner on compassionate grounds with suitable post based on the educational qualification with all monetary and service benefits.

For Petitioner : Mr. B.Kumar, SC, for
Mr. A.Esakkiappan

For Respondent : Mr. S.Thangavel, Spl. GP

ORDER

It is the case of the petitioner that his father, while working as Head Constable under the respondent, died in harness on 3.10.04 and his wife, viz., the mother of the petitioner, predeceased his father. At the time of demise of his father, the petitioner was a minor, aged about 13 years and, therefore, the petitioner, on completion of 16 years, submitted an

application to the respondents for compassionate appointment on 30.4.06, which was rejected vide order dated 27.7.07 citing the minority of the petitioner on the said date.

2. It is the further case of the petitioner that his date of birth is 10.7.1991 and on completion of 18 years on 10.7.09, the petitioner against submitted another application for consideration of his case for compassionate appointment, which was again rejected by the 3rd respondent on the ground that at the time of death of his father, the petitioner having not completed the age of 18 years, his claim cannot be considered on the basis of G.O. Ms. No.120, Labour & Employment Dept., dated 26.6.1995 vide order dated 20.8.09, which is also impugned herein.

3. Thereafter, the petitioner submitted a detailed representation on 7.5.12 to the 2nd respondent seeking compassionate appointment, which was forwarded to the 3rd respondent on 20.12.13. However, once again, the representation of the petitioner was rejected by the 3rd respondent vide the impugned order dated 14.1.14 drawing reference to G.O. Ms. No.112, P&AR (S) Dept., dated 23.8.05. The continuous rejection of the application of the petitioner for compassionate appointment without adherence to the ratio laid down by the Hon'ble Supreme Court and the Division Bench of this Court has prompted the petitioner to file the present application.

4. Learned senior counsel appearing for the petitioner submitted that the petitioner, being a minor at the time of demise of his father, though had not applied immediately, but he had submitted his application for compassionate appointment within the prescribed period, however, the respondents have rejected the claim of the petitioner on the ground that he was a minor even then. It is the submission of the learned senior counsel for the petitioner that minority of the petitioner cannot be the ground for rejecting his application and his case could very well be considered on his attaining majority. In this regard, reliance has been placed on the decision of the Hon'ble apex Court in Syed Khadim Hussain - Vs - State of Bihar & Ors. (2006 (9) SCC 195) and the decision of the Division Bench of this Court in P.Sathiarman - Vs - Secretary to Govt. Dept. of Electricity & Ors. (2013 (8) MLJ 190).

5. It is the further submission of the learned senior counsel for the petitioner that the petitioner, even at a minor age, despite all the struggles, has educated himself and risen to get himself qualified for getting an appointment and in such a scenario, the benevolent act of providing compassionate appointment ought to have been extended to the petitioner by the respondents. However, losing sight of the purpose and intent

behind the grant of compassionate appointment, the respondents have rejected the claim of the petitioner, which is illegal and requires to be interfered with.

6. Per contra, learned Special Government Pleader appearing for the respondents, adverting to the counter filed, submitted that the initial petition, filed during his minority was rejected, as the petitioner was then a minor and the subsequent application, on attaining majority was submitted beyond the prescribed period of three years and in terms of G.O. Ms. No.120 (Labour & Employment) dated 20.6.1995, the application for appointment on compassionate grounds should be made within a period of three years from the date of death of the government servant and the petitioner not having fulfilled the necessary eligibility criteria, his case was rightly rejected by the respondents.

7. It is the further contention of the learned Special Government Pleader that vacancies that arise ought to be filled up then and there and no vacancy can be kept reserved for a dependent/claimant on the ground of his minority and attributing such an yardstick would defeat the very purpose of compassionate appointment, which is only to provide immediate relief to the family of the deceased employee. Therefore, it is prayed that no interference is called for with the impugned order.

8. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record and also adverted to the decisions relied on by the learned counsel for the petitioner.

9. Before proceeding to analyse the case projected by the petitioner, it is but necessary to advert to the law on the subject of compassionate appointment.

10. In Syed Khadim Hussain's case (supra), the Supreme Court, which case has been relied on behalf of the petitioner, with reference to the petitioner being a minor at the time of death of his father, in the facts of the said case, as it transpires from para-5 of the judgment, held as under :-

"5. When the appellant submitted the application he was 13 years old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for

appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application."

11. From a perusal of the above judgment, it is evident that the facts in the said case cannot be equated to be identical to the case of the petitioner herein. Though in the above case, the petitioner therein was aged 13 years on the date of death of his father and had submitted his application for compassionate appointment even during his minority, however, the respondents having not passed any orders on the said petition for a period of almost six years and allowed the petitioner to attain majority on the date when the order was passed, the Supreme Court had passed affirmative direction in the said case. However, in the case on hand, the petitioner, though was aged 13 years on the date of death of his father, submitted application for compassionate appointment, which was rejected even before he attained majority. Therefore, the said case would in no way come to the aid of the petitioner to advance his case.

12. The decision in Sathiarman's case (supra) relied on by the petitioner would not stand attracted to the case of the petitioner herein, as in the said case, initially the mother of the petitioner filed application for compassionate appointment twice, which was rejected by the respondents for the reasons recorded in the said order and, thereafter, the application of the son of the deceased employee was also rejected on the ground that he has not attained the age of majority. However, in the case on hand, it is to be pointed out that there was no petition earlier within the prescribed period by any of the blood relative of the petitioner, as his mother predeceased his father and it was only the petitioner, who had applied thrice for compassionate appointment, which were rejected for the reasons aforesaid. Therefore, the decision in Sathiarman's case (supra) would in no way stand attracted to the case of the petitioner and would not further the case of the petitioner as the facts in the said decision is not identical to the facts in the case on hand.

13. Be that as it may. In W.P. (MD) Nos.7016 of 2011, etc. Batch, vide order dated 11.3.2020, on a reference made by the learned single Judge of this Court relating to conflicting views in relation to compassionate appointment, the matter was placed before the Full Bench. The reference made to the Full Bench is as under :-

"Whether the view taken in A.Kamatchi's case holding that an application for compassionate appointment made even beyond three years of the death of the deceased needs consideration, is the correct law or the judgment of the Division Bench in N.Renugadevi's case, where a contradictory view has been taken, is the correct law?"

14. Tracing the lineage on the advent of compassionate appointment and the factors that are to be had in mind, while considering a case of compassionate appointment, the Full Bench sculpted the factors that needs to be taken into consideration while looking at a case relating to grant of compassionate appointment and for better understanding the same is extracted hereunder :-

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, 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 or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts. (Refer Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138).

15. From the above, it is unambiguously clear that application for compassionate appointment should be made without undue delay and it should be considered strictly in accordance with the governing scheme and no discretion is vested with the authority and that the concept of compassionate appointment is only to meet the sudden crisis that has befallen the family on the death of the breadwinner.

16. From the above the main ingredient for considering a case for compassionate appointment is that it is only for the purpose of meeting the sudden crisis that has occurred due to the untimely death of the breadwinner. It is not that in all cases where the breadwinner breathes his last in harness, compassionate appointment, at any point of time, ought to be given as a matter of right.

17. The Full Bench, in the above said decision, after discussing the various Government Orders and also the laws propounded on the subject by the High Court as well as by the Hon'ble Apex Court, answered the reference in the following terms :-

"In view of the above, the reference is answered as under:-

a) Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the scheme that has been framed by the employer. Any deviation from the scheme is not permissible.

b) In view of the above the judgment of the Division Bench in E.Ramasamy Vs. Tamil Nadu Electricity Board and the Secretary to Government Vs. Renugadevi, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down the correct proposition. Reference is answered accordingly."

18. From the conceptual proposition of law laid down by the Full Bench, it is implicitly clear that the appointment on compassionate basis should be strictly be in accordance with the Government Orders/the Scheme framed for the said purpose by the employer.

19. Keeping the above proposition as adumbrated by the Full Bench, this Court proceeds to analyse the issue on hand.

20. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the families of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

21. Appointments to public offices have to comply with the requirements of Articles 14 and 16 of the Constitution of India. Compassionate appointment is in the nature of an exception to the ordinary norm of allowing equality of opportunity to other eligible persons to compete for public employment. The reason for compassionate appointment, as envisaged under the scheme, and the relevant Government Orders, is the need of immediate necessity to avert the financial hardship that would be sustained by the bereaved family on the death of its breadwinner which is sought to be alleviated by providing immediate appointment.

22. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority, such lapse of time on the part of the claimant will definitely lead to dilute the immediacy of the requirement. The time spent to attain majority cannot be a ground to establish the existence of indigence even after attaining the age of majority. Holistically considering, the period of three years for moving an application for compassionate appointment is provided, which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority. However, the lower the age of the dependent would not be an attributing factor to extend the period, as such elasticity would have no ends to meet.

23. In the case on hand, it is not in dispute that on the date of death of the petitioner's father, the petitioner was aged 13 years and on reaching about 16 years of age, the petitioner submitted an application for compassionate appointment, which was rejected on the ground of minority. The subsequent application of the petitioner on reaching the age of majority, which is well beyond the prescribed period of three years, was also rejected by the authority, on the ground that the said application was beyond the prescribed period and also in view of the fact that the petitioner had attained majority only after the passage of the prescribed and would therefore be hit by G.O. Ms. No.112, P&AR (S) Dept., dated 23.8.05. The said facts, even according to the petitioner, are not in dispute. The only ground on which the petitioner claims an appointment on

compassionate grounds is that his father died in harness and, therefore, as his surviving legal heir, he is entitled to compassionate appointment.

24. As pointed out above, the intent and purpose for which the benevolent act is intended is to alleviate the poverty of the distressed family at the crucial hour and to provide it with financial stability. In the case on hand, the mother of the petitioner predeceased his father and that the petitioner's father died when he was 13 years of age. Even in the calamitous situation, the petitioner has been brought up and has completed his education upto graduation, which clearly shows that the family definitely had means to sustain itself even during the distressed situation. Therefore, the plea of the petitioner to direct the respondents to provide the relief of compassionate appointment to the petitioner by issuing appropriate directions would be an exercise, beyond the scope and ambit of compassionate appointment and issuing such a direction would defeat the very purpose for which the said benevolence has been granted to deserving individuals.

25. For the reasons aforesaid, this Court is not inclined to interfere with the order passed by the respondents as no case has been made out by the petitioner to substantiate his grievance. Accordingly, this writ petition, being devoid of merits, is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Principal Secretary to Govt.
Home (Police) Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai 600 009.

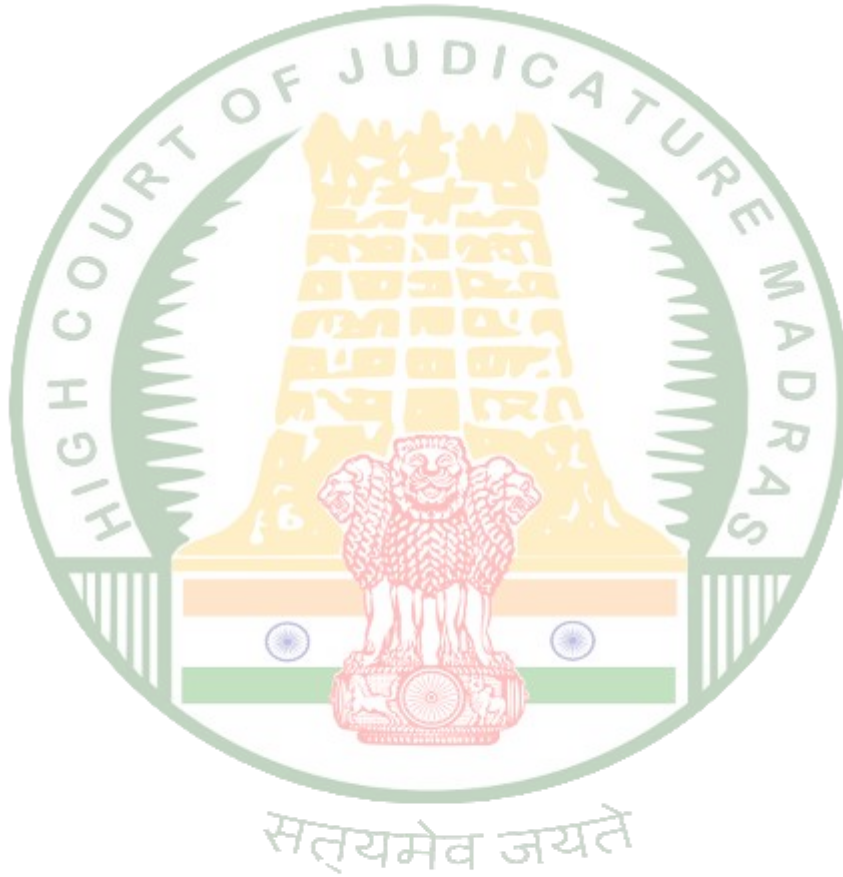
2. The Director General of Police
Mylapore, Chennai 600 004.

3. The Superintendent of Police
Pudukottai District, Pudukottai.

+lcc to the Government Pleader, S.R.No.40069

PRE-DELIVERY ORDER IN
W.P. NO. 25231 OF 2014

NRL (CO)
KKV/31/12/2020



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