

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2111 of 2021

M.Vijayan

... Petitioner

Vs.

1. The Commissioner of Police,  
Greater Chennai Police,  
Vepery, Chennai 600 007.

2. The Deputy Commissioner of Police (Administration),  
Greater Chennai Police,  
Vepery, Chennai 600 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned orders of the 1<sup>st</sup> Respondent dated 04.11.2020 made in Na.Ka.No.Ka.APa.Ni/320/82363/2020 and the consequential order dated 12.01.2021 made in Na.Ka.No.Ka.APa.Ni/320/82363/2020 and to quash the same and consequently direct the Respondents to provide appointment on compassionate ground to the Petitioner in the light of the provisional selection orders dated 22.10.2020 dated 04.11.2020 made in Na.Ka.No.Ka.APa.Ni/320/82363/2020 and the consequential order dated 12.01.2021 made in Na.Ka.No.Ka.APa.Ni/320/82363/2020, forthwith.

For Petitioner : Mr.C.Prabhakaran

For Respondents : Mr.P.Karthikeyan,  
Additional Government Pleader

## O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order dated 04.11.2020 passed by the 1<sup>st</sup> Respondent and the consequential order dated 12.01.2021, and for a direction to the Respondents to provide him appointment on compassionate ground.

2. According to the Petitioner, his father Manokaran, who was working as Head Constable at M-6, Manali Police Station, passed away on 13.09.2006 due to illness, leaving behind him, the Petitioner and his mother, brother and sister, as his legal heirs. Initially, the Petitioner's elder brother viz. M.Diwakar made an application seeking compassionate appointment for a suitable post, within the prescribed period. As he got married and left the Petitioner's family, the Petitioner began taking care of his mother. Thereafter, the Petitioner made an Application before the Respondents for change of nominee seeking compassionate appointment on account of death of his father.

3. Pursuant thereto, a provisional selection was made and a call letter dated 22.10.2020 was issued by the 1<sup>st</sup> Respondent calling upon the Petitioner to produce all the documents on 05.11.2020. However, on 04.11.2020, the Petitioner and his mother were directed to be present before the 1<sup>st</sup> Respondent. Accordingly, the Petitioner and his mother appeared before the 1<sup>st</sup> Respondent and produced all necessary documents. The 1<sup>st</sup> Respondent passed the impugned order cancelling the Petitioner's provisional selection for compassionate appointment and informed him that, only his elder brother Diwakar is eligible for such appointment, and the latter was directed to furnish necessary documents.

4. Thereafter, the Petitioner's brother Diwakar appeared before the 1<sup>st</sup> Respondent on 17.11.2020 and submitted 'No Objection Letter' for granting compassionate appointment to the Petitioner. Despite the same, the 1<sup>st</sup> Respondent issued the impugned order rejecting the Petitioner's request for change of nominee. Hence, having no other alternative, the Petitioner is before this Court.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. Admittedly, the Petitioner has not made an Application seeking compassionate Appointment within the stipulated period of three years and it is the Petitioner's elder brother, who made such Application. Even though the Petitioner's brother issued 'No Objection Letter' to the 1<sup>st</sup> Respondent for granting compassionate Appointment to the Petitioner, the fact remains

that, the Petitioner has not made any Application seeking appointment on compassionate ground to the 1<sup>st</sup> Respondent within three years from the date of death of his father. At the time of death of his father in 2006, the Petitioner was aged 26 years and now, the Petitioner is 41 years.

7. While considering the claim for employment on compassionate ground, the Apex Court, in the case of Bhawani Prasad Sonkar vs. Union of India and others reported in (2011 (4) SCC 209), has discussed about the factors that have to be borne in mind. Relevant portion of the said judgment is extracted hereunder:

"20. Thus while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules of 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 de-hors 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 bread-winner 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 dependants 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."

8. In a similar circumstance, the First Bench of this Court in W.P. (MD) Nos.7016 of 2011, batch of cases, by an order dated 11.03.2020, has held as under:

"13. In the light of the above we find that the judgment in the case of A. Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E. Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above.

14. Where there is a contest between legal heirs, priority should be given to the one who is befitting enough to shoulder the responsibility of destitution of the family. In the event there is a Court intervention, the orders passed or final verdict should be adhered to. In the event of mere pendency, appointment may be given subject to the outcome of the litigation or any orders passed by the Court to that effect."

9. Compassionate appointment shall not be considered as a backdoor entry and it is based on rules, regulations, guidelines and Government Orders. However, it should be remembered that compassionate appointment is not an usual recruitment process and the candidates seeking such appointment will have to satisfy all the requirements contemplated under the Rules with regard to age, qualification, etc, but however, it is subject to relaxation depending upon the circumstances of each case.

10. As the Petitioner herein has not made an Application within the stipulated period, he is not eligible to the relief sought for in this Writ Petition. Hence, this Writ Petition stands dismissed as devoid of merits. No costs. Consequently, connected W.M.P.No.2393 of 2021 is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Commissioner of Police,  
Greater Chennai Police,  
Vepery, Chennai 600 007.
2. The Deputy Commissioner of Police (Administration),  
Greater Chennai Police,  
Vepery, Chennai 600 007.

+1CC M/s C.Prabakaran, Advocate Sr.No.5506  
+1CC to Government Pleader Sr.No.6096

W.P.No.2111 of 2021

LN(CO)  
A.SK (12.07.2021)

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