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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

W.A.NO.1887 OF 2021

AND

C.M.P.NO.12061 OF 2021

1. The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Social Welfare and Nutritious Meal Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Commissioner,
Commissionerate of Social Welfare,
No.1, Panagal Maligai Building,
II Floor, Saidapet,
Chennai-600 015.
3. The District Planning Officer,
Integrated Child Development Program,
District Collectorate,
Villupuram District.

.. Appellants/Respondents

Vs.

C.Anusuya

.. Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 13.02.2020 in W.P.No.3458 of 2020.

Prayer in W.P.No.3458 of 2020:-

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records connected with proceedings of the 2nd Respondent bearing Letter No. 39490 / Adm 4 (3) / 2019 dated 06.01.2020 and quash the same as illegal arbitrary and contrary to law and consequently direct the Respondents to



provide appointment to the petitioner on compassionate grounds in the suitable post in light of G.O.No. 18 dated 23.01.2020 within the time frame stipulated by this Honble Court.

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For Appellant : Mr.R.Neelakandan,
State Government Counsel

For Respondent : Mr.Nagendraprasad

J U D G E M E N T

(Judgment was delivered by PUSHPA SATHYANARAYANA, J.)

The State filed this appeal against the order dated 13.02.2020 made in W.P.No.3458 of 2020.

2. By virtue of the order impugned, the writ Court disposed of the writ petition directing the respondent herein/writ petitioner to submit an application to the second appellant/second respondent therein seeking compassionate appointment and the same was directed to be considered in line with G.O.Ms.No.18, Labour and Employment Department, dated 23.01.2020, without reference to the earlier rejection order.

3. It is the case of the respondent/writ petitioner that her mother was working in the office of the third appellant and she died on 19.09.2015 due to heart ailment leaving behind the writ petitioner and her three sisters. The father predeceased the mother of the writ petitioner even in the year 1993. After her demise, the family is in penury and thus, the writ petitioner attempted to get appointment on compassionate grounds, by submitting an application on 11.09.2018, which is well within a period of three years from the date of the demise of her mother. The appellants rejected the same on 06.01.2020 on the ground that she crossed the upper age limit to be eligible for compassionate ground appointment. She successfully challenged the said order before the Writ Court.

4. The learned State Government Counsel appearing on behalf of the appellants contended that the writ petitioner crossed the upper age limit and as such, though she submitted the application in time and hence, she is not eligible to seek the benefit of the scheme of compassionate appointment.

5. Heard the learned counsel for the writ petitioner/respondent on the above submissions, who submitted that the learned Single Judge after appreciating the factual



position passed the order in the writ petition and thus, he sought to sustain the impugned order.

6. There is no dispute with respect to the factual position between the parties. The primordial contention of the learned counsel for the appellants is that the scheme of compassionate appointment that is prevalent on the date of considering the application, is relevant for consideration and as such, the authorities rightly rejected the application, but the learned Single Judge took note of the upper age limit fixed in the recent Government Order in G.O.Ms.No.18, dated 23.01.2020, and issued the consequential directions, which are liable to be set aside.

7. At this juncture, it is apt to refer to the judgment of the Hon'ble Supreme Court in N.C.Santhosh V. State of Karnataka, (2020) 7 SCC 617, wherein, it was held as follows :

"13. It is well settled that for all the government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In SAIL v. Madhusudan Das (2008) 15 SCC 560, it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants.

14. This Court in SBI v. Raj Kumar, (2010) 11 SCC 661 while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to modify the scheme depending on its policies was recognised in this judgment. Similarly, in MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583, this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the government employee.

15. However, in Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 in the context of major shift in policy, whereunder, instead of compassionate appointment (envisaged by the scheme dated 8-5-1993), ex gratia payment was proposed (under the Circular dated 14-2-2005), the Court adopted a different approach. Noticing the extinguishment of the right to claim appointment, this Court held the "dying in harness scheme" which



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was prevalent on the death of the employee, be the basis for consideration.

16. A two-Judge Bench headed by Uday U. Lalit, J. noticed the Supreme Court's view in SBI v. Raj Kumar, (2010) 11 SCC 661 and MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583 on one side and the contrary view in Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412, and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in SBI v. Sheo Shankar Tewari, (2019) 5 SCC 600, the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

17. The above discussion suggest that the view taken in Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 is to be reconciled with the contrary view of the coordinate Bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellant's counsel on Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412 as also the opinion of the learned Single Judge of the Karnataka High Court in Uday Krishna Naik v. State of Karnataka, 1999 SCC OnLine Kar 209, it cannot be said that the appellant's claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the government employee.

18. In the most recent judgment in State of H.P. v. Shashi Kumar, (2019) 3 SCC 653 the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the Bench, Dr D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy.

19. Applying the law governing compassionate appointment culled out from the abovesaid judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the



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death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

20. In view of the foregoing opinion, we endorse the Tribunal's view as affirmed N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 7396 by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments [N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 7396], [Sayeda Farheen Banao v. State of Karnataka, 2013 SCC OnLine Kar 6616], [Santosh v. Revenue Deptt., WP No. 28738 of 2011, order dated 2-12-2011 (Kar)], the appeals are found devoid of merit and the same are dismissed."

(emphasis is ours)

8. From the above, it is clear that the objective of the scheme is only to provide solace and succor to the family in difficult times, the relevancy is at that stage of time when the employee passes away. In view of the Government Orders prevalent as on date, the appellants cannot take umbrage under the old scheme to negate the application of the writ petitioner, and the writ Court also rightly directed the appellants to reconsider the application to be submitted by the writ petitioner, without referring to the earlier rejection order. We find no infirmity in the said order.

9. Accordingly, the Writ Appeal fails and the same is dismissed. In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Secretary,
Social Welfare and Nutritious Meal Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Commissioner,
Commissionerate of Social Welfare,
No.1, Panagal Maligai Building,
II Floor, Saidapet,
Chennai-600 015.

3. The District Planning Officer,
Integrated Child Development Program,
District Collectorate,
Villupuram District.

+1cc to Mr.E.K.Kumaresan, Advocate, S.R.No.41602

+1cc to the Government Pleader, S.R.No.42072

W.A.No.1887 of 2021

NR(CO)
RLP(24/09/2021)