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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Writ Appeal No.1877 of 2021

1.Irosa

2.P.Prabhakaran

... Appellants

vs.

1. Government of Tamil Nadu,
Represented by Secretary to Government,
Revenue Department,
Secretariat, Chennai 600 009.

2. The Principal Secretary and Commissioner of
Revenue Administration,
Chepauk, Chennai 600 005.

3. The District Collector,
Tiruchirapalli District,
Tiruchirapalli.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 05.08.2020 passed by this Court in
W.P.No.10203 of 2020.

Prayer in W.P.No.10203 of 2020: Writ Petition filed under
Article 226 of the Constitution of India praying for issuance of
a writ of certiarified Mandamus to call for the entire records
pertaining to the proceedings Na.Ka.No.A4/56374/2008 dated
11.02.2020 issued by the 3rd respondent and quash the same and
to direct the respondents herein to provide appointment on
compassionate grounds to the second petitioner herein within a
limited time frame.

For Appellants : Mr.M.Ravi

For Respondents : Mr.K.Tippu Sulthan,
Government Advocate



J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN, J.)

This Writ Appeal is filed challenging the order dated 05.08.2020 passed by the learned Single Judge in W.P.No.10203 of 2020, whereby, the request of the Writ Petitioners seeking compassionate appointment was rejected on the ground that, they have approached the Court after three decades.

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

3. The delay attributed for approaching this Court belatedly that, a Civil Suit was pending between the Writ Petitioners and the rival Claimants, cannot be accepted, as, the civil proceedings came to an end in the year 2013 itself, and that, compassionate appointment cannot be sought after a period of three decades. The learned Single Judge has observed that, a Government job cannot be a subject matter of inheritance and cannot be claimed as a matter of right, and it can only be claimed as a matter of grace, as appointment itself is qualified as compassionate appointment.

4. Undoubtedly, the Scheme for compassionate appointment is meant to render immediate employment assistance to the family members of the deceased employee and such employment cannot be kept pending, as, in the case on hand, the Writ Petitioners have slept over the matter for more than three decades.

5. In the case on hand, the first Appellant viz. Irosa claims to be the first wife of the deceased employee and the second Appellant is his son. The employee died while in service on 30.03.1988 and the first Appellant, who is his wife made an Application seeking appointment on compassionate ground on 22.02.1990. At that point of time, another lady, claiming to be the wife of the deceased employee made a counter-claim for compassionate appointment. This made the Government to take a neutral stand that, unless otherwise, the relationship between the first Appellant and the deceased employee is established by the competent Court of Law, the request for compassionate appointment cannot be considered.

6. Accordingly, the first Appellant viz. Irosa approached the competent civil Court to get a declaration that, she is the legally wedded wife of the deceased employee. The District Munsif Court, Jayamkondam passed a judgment and decree on 17.09.2013 in O.S.No.173 of 1996, dismissing the said Suit filed by the counter-Claimants. Even during the pendency of the Suit, the first Appellant made an Application as early as in 2008, requesting to grant compassionate appointment to her son viz. P.Prabhakaran. But, the District Collector, Tiruchirapalli,



vide proceedings dated 27.12.2008, observed that, parties must obtain orders from the Court that, they are the Legal Heirs of the deceased Government servant, in order to consider their request.

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7. Though the Service Register of the deceased employee was found to be missing, based on the available records, the District Collector came to the conclusion that, the deceased employee was in employment from 10.11.1987 in Tiruchirapalli District Revenue Unit till 30.03.1988, on which date, he died in an accident. By passage of time, the son of the deceased employee viz. P.Prabhakaran, the second Appellant herein, who was only four years old at the time of death of the employee, attained majority.

8. A feeble argument has been advanced by the learned Government Advocate appearing for the Respondents herein that, on the date of the judgment and decree, the second Appellant was 23 years old and that, he should have made an Application at least within three years after attaining majority. The said argument cannot be accepted in the light of the order dated 27.12.2008 passed by the District Collector, Tiruchirapalli, whereby, the parties have been asked to await the verdict of the civil Court.

9. There are a catena of Apex Court decisions holding that, compassionate appointment cannot be granted, when an Application is made beyond the time stipulated. In that regard, it is worth referring to an Apex Court decision in the case of Bhawani Prasad Sonkar vs. Union of India reported in (2011) 4 SCC 209, relevant portion of which, 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



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bread-winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largess 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.

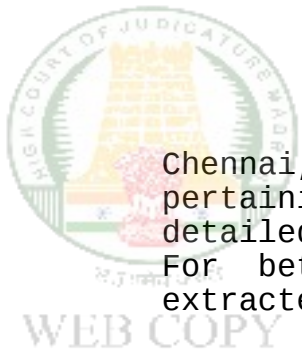
(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

10. In the light of the facts discussed supra, it is clear that, neither the Appellants nor the Respondents herein are said to be at fault, and it is only due to the pendency of the litigation before the civil Court, the request of the first Appellant herein, i.e. the wife of the deceased employee, could not be considered. When the Department wanted to consider the case of the first Appellant, she had already crossed the age limit for appointment. By passage of time, as stated supra, the second Appellant attained majority and became eligible to be considered for compassionate appointment.

11. Though, we are entirely in agreement with the observation made by the learned Single Judge that, compassionate appointment is not a matter of right, in the present set of facts, moreso, when the Government has passed an order to keep the request of the Appellants for compassionate appointment in abeyance, by asking the parties to produce the order of the civil Court, the case of the Appellants cannot be rejected.

12. The Court renders judgment, which is completely different from rendering justice. That is, in life, expectation is different from reality. For example, in most of the criminal cases, 'Truth never triumphs', as benefit of doubt goes in favour of the accused, even though Lawyers will know that, the accused is the culprit, but, in the absence of chain link, the accused will come out from the charges. In all cases, we would like to render justice rather than rendering judgment. Though, there is enormous delay of more than three decades on the part of the Appellants in approaching this Court, neither the Appellants nor the Government are at fault and that, the delay is only on the part of the civil Court in disposing of the matter. Hence, this Court is of the considered view that, the second Appellant shall not be deprived of compassionate appointment, if he is otherwise eligible to be considered.

13. This Court, in a similar circumstance, in W.P.(MD) Nos.4129, 7045, 16624 and 20786 of 2014 and W.P.(MD) Nos.19455 and 19530 of 2018 [S.Gowtham Balu vs. The Managing Director, Tamil Nadu Electricity Generation and Distribution Corporation,



Chennai, decided on 24.09.2018], has considered all the aspects pertaining to grant of compassionate Appointment and passed a detailed order by extending a few suggestions to the Government. For better appreciation, relevant portion of the same, is extracted hereunder:

"6. The Government may think of issuing a fresh Government Order, if they want to stick on compassionate appointment scheme and one such condition is that compassionate appointment would be considered only for Class-IV employment and that age can be relaxed and the qualifications can be entirely relaxed, as there is no need for any qualification for the purpose of appointing the persons as sweeper, gardener and the like. In the event the spouse refusing to accept the Class-IV employment, the same can be rejected and the children, after becoming major, cannot seek for compassionate appointment. There should be a prescribed procedures so that the application can be routed through Email and the said application will have to be considered and orders to be passed within the stipulated time. For making an application a time limit can be fixed as one year instead of three years. The appointment through compassionate appointment is a substantial litigation in this Court and the Government should ensure that they take an unbiased decision within a maximum period of six months so that the applicant will know where they stand. As a matter of right, the applicant cannot demand that based on the higher qualification they shall be appointed in Class-III posts, as the Class-III posts is meant either for promotion or for direct recruitment and shall not be taken for compassionate appointment. In addition to the above, this Court expects the Government to take into account the following suggestions and issue a Government Order immediately so that it can be given effect to from 1st January, 2019:

(i) the compassionate shall be made within a period of one year from the date of death of the deceased Government employee;

(ii) the qualification for Class-IV employees can be completely exempted for the purpose of giving compassionate appointment and though Basic Rules provide for certain category of posts falling under compassionate appointment, the same is only illustrative in nature. For example, for appointment to the post of Sweeper, there is no need to prescribe any qualification and what is required is, it must be ensured as to whether persons to be appointed to the post of Sweeper on compassionate



ground know to read and write and ride bicycle / two wheeler and other basic household / office works;

(iii) as held by the Hon'ble Supreme Court in the case reported in [(2011) 4 SCC 209], the purpose of compassionate appointment is to meet the sudden crisis and there is no need to keep a post to claim after 18 years. Therefore, it is clear that the request for appointment on compassionate ground for the child in the womb, by seeking reservation of one post till the child's majority cannot be entertained;

(iv) whenever an application for compassionate appointment is made, it should be decided within a period of three months from the date of receipt of the said application and the person making such application for compassionate appointment should despatch the same either by speed post or by registered post. Once an application is received, it is open to the concerned authorities to call for the documents from the deponents / legal heirs so that her case can be considered and decision should be taken within a period of two months thereafter. Once a request is made calling for documents, the concerned person will have to submit the required documents within 15 days. If the application for compassionate appointment is not decided within three months from the date of receipt of such application, then the concerned Officer, who is responsible to take a decision thereon, should be removed from the post and posted in a non-sensitive post. This will avoid further litigation, as the persons applying for compassionate appointment have been approaching this Court for disposal of the representation after lapse of decades and getting an order so as to litigate unnecessarily and the order of disposal of representation is not a conclusive one for litigants, but a starting point of litigation;

(v) the documents sought by the concerned authorities should be uploaded by the application so that there would be no quarrel with regard to non-consideration of vital documents by the authorities, while scrutinizing the application for compassionate appointment. The applicant shall also furnish his/her Cell Number, Email Address, etc., to enable the authorities to communicate the order to be passed in his/her application.

(vi) for the sake of brevity, it is reiterated that the compassionate appointment should be restricted only to Class-IV employment instead of Class-III & IV so that the claim for compassionate appointment would be



reduced;

(vii) in case compassionate appointment is considered other than the spouse, then 25% of the gross monthly income shall be directly paid to the spouse by way of NEFT or RTGS and the said gross income is subject to income tax deductions. The reason for not granting 25% of the amount from the Nett salary is that the employee may take loans and ensure that the take-home salary is very less and the 25% of the amount payable on the Nett after loan deduction would be very meagre and will not be sufficient to have a square meal for the day for the spouse at the old age. Many of the children, after getting employment, are driving the parents to old age home and in order to ensure that the spouses are protected and taken care of, 25% of the amount has got to be given to them. As per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, it is the bounden duty of children to take care of them and their children should not be allowed to leave their parents in lurch, thereby letting them scot-free and the old aged people at the fag end of their life are rushing to Courts to get money from their children. In order to avoid such a haphazard situation, this Court wants to ensure that 25% of the gross shall be paid to the spouses, which would be subjected to income tax payable by the employee.

(viii) the spouse, who is getting 25% of the amount as mentioned supra shall produce the life certificate once in a year preferably on the 1st March of every year;

(ix) we suggest that the Government issues a Government Order to that effect, as the Court is burdened with not less than 5% of the service matters, seeking employment on compassionate ground from various departments, such as Electricity Board, etc and since there is no uniform guidelines for all the Government departments, there is always a confusion and chaos, thereby creating unnecessary litigations;

(x) the compassionate appointment shall not be considered as a back door 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 the age, qualification, etc, but however, it is subject



to relaxation depending upon the circumstances of each case."

14. In view of the foregoing, we are inclined to interfere with the order of the learned Single Judge. Accordingly, the order dated 05.08.2020 passed by the learned Single Judge in W.P.No.10203 of 2020 is set aside and the Government is directed to consider the case of the second Appellant viz. P.Prabhakaran, if he is otherwise eligible for compassionate appointment in class IV post alone, and take a decision and communicate the same to the second Appellant, within a period of three months from the date of receipt of a copy of this order.

15. It is made clear that, this order cannot be treated as a precedent, as compassionate appointment for the second Appellant is directed to be considered, only by taking into account the peculiar facts and circumstances of the case.

The Writ Appeal is ordered accordingly. No costs.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

(vm/aeb)

To:

1. The Secretary,
Government of Tamil Nadu,
Revenue Department,
Secretariat, Chennai 600 009.
2. The Principal Secretary and Commissioner of
Revenue Administration,
Chepauk, Chennai 600 005.
3. The District Collector,
Tiruchirapalli District,
Tiruchirapalli.

+1CC to M/s.M.Ravi, Advocate, SR.No. 45406

W.A.No.1877 of 2021

PA(CO)
B.VC (06/10/2021)