

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.1883 of 2021

K.Durgadevi

...Appellant/Petitioner

Vs.

1. The Superintendent of Police,
Thiruvallur District.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
3. The Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai-9. ...Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 26.04.2021 in W.P.No.18907 of 2014.

Prayer in W.P.No.18907 of 2014 : This Writ Petition filed under Article 226 of the Constitution of India calling for the records of the First Respondent in connection with the impugned order passed in Na.A.Vu.Mu.A 4/7920/2009 dated 25.06.2014 and quash the same and further direct the respondents to appoint the Petitioner on Compassionate ground in commensurate with her Educational and grant her all consequential service benefits.

For Appellant : Mr.M.Muthappan

For Respondents : Mr.C.Jayaprakash,
State Government Counsel

J U D G E M E N T

(Judgment was delivered by PUSHPA SATHYANARAYANA, J.)

The appellant is the writ petitioner and aggrieved by the order dated 26.04.2021 dismissing W.P.No.18907 of 2014, wherein, the prayer sought for by her to quash the order of rejection of

her request for compassionate appointment was negatived, this appeal has been instituted.

2. It is the case of the appellant/writ petitioner that her father one Kumar, while working as Grade-II Police Constable in the Police Department for about 10 years, died on 05.07.2007 in an accident. The mother of the appellant pre-deceased him on 04.02.2002. They have three female children, including the appellant and all of them were minors then. From the date of death of parents, all the three children were under the care and custody of their maternal uncle one K.Venu, who had submitted an application on 30.04.2009 before the first respondent seeking compassionate appointment to the writ petitioner. Since the writ petitioner was a minor at that time aged 14 years, it was rejected on 27.08.2009. Upon attaining majority, the writ petitioner presented a representation on 16.06.2014 to the first respondent making similar claim of compassionate appointment. The same was rejected citing the same reason and the earlier rejection order. Thus, she filed W.P.No.18907 of 2014 questioning the rejection order. Since it was dismissed, she is before this Court.

3. The learned counsel for the writ petitioner contended that the application seeking compassionate appointment was submitted by the guardian of the writ petitioner within six months from the date of death of the deceased Government servant, but the same was rejected on the ground that the writ petitioner was a minor and therefore, immediately, after attaining majority, she filed the representation, which ought to have been considered by the respondents, as the writ petitioner and her two sisters were and are in indigent circumstances, having lost their parents and living in the care of their maternal uncle with the meager family pension. But both the respondents and the writ Court, without appreciating all these materials, negatived the request of the writ petitioner. Thus, he seeks to quash the said orders.

4. The learned State Government Counsel submitted that the impugned orders were passed taking into account the guidelines issued by the Government in respect of appointment under compassionate ground. Since the writ petitioner is not entitled for the benefit of the benevolent scheme, her claim was rightly rejected and the said orders require no interference.

5. We have considered the rival submissions and perused the materials placed before us.

6. Admittedly, the writ petitioner was a minor at the time of death of her father-the deceased police constable. The mother predeceased him. The contention of the learned counsel for the

appellant is that pursuant to the rejection of the earlier application for compassionate appointment on the ground of not attaining majority by the claimant, the appellant submitted second application seeking compassionate appointment after attaining majority within the period of three years and as such, the same cannot be denied on the same and similar ground that she was a minor at the time of death of her father. But the learned Single Judge, in the impugned order, relying upon the latest Government Order issued by the State Government extensively culling out all the guidelines for appointment under compassionate ground in G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020, upheld the rejection order of the respondents.

7. The learned Single Judge also relied upon the order of the Full Bench of this Court dated 11.03.2020 in W.P.(MD). No.7016 of 2011. It was held therein that the persons seeking compassionate appointment must make the application without any delay and the Authority also to consider the same within a reasonable time and as the compassionate appointment is deviation from the regular procedure of recruitment intended to meet the sudden crisis occurring in the family on account of the death of the breadwinner, any such application made has to be considered within a reasonable period of time. The Full Bench relied upon the judgment in Bhawani Prasad Sonkar V. Union of India & Others, (2011) 4 SCC 209, wherein, in paragraph 20(ii), it was observed as follows :

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

8. At this juncture, it is apt to refer to the judgment of the Hon'ble Suprme 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 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 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 in *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], [*Sayed 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."

9. From the above, it is clear that the object 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 appellant cannot submit application claiming compassionate appointment, after the expiry of three years, though she may be a minor at that time. The appellant and her sisters are in receipt of family pension and thus, it cannot be stated that they are in indigent circumstances. At the risk of repetition, it is to be stated that the compassionate

appointment cannot be claimed as a matter of right, that too, after seven years from the date of death of the deceased Government servant.

10. The writ Court also rightly dismissed the writ petition and the impugned order requires no interference. Accordingly, the Writ Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai-9.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
3. The Superintendent of Police,
Thiruvallur District.

+1 CC to Mr.M.Muthappan, Advocate, Sr.No. 38663.
+1 CC to The Government Pleader, Sr.No. 39118.

W.A.No.1883 of 2021

NR(CO)
LS(05/08/2021)