



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) No.6501 of 2017

and

W.M.P (MD) No.5098 of 2017

K.Selvarani

...Petitioner

Vs

1.The Secretary to Government,
Government of Tamil Nadu,
Highways Department,
Fort St.George, Chennai-9.

2.The Principal Director,
Office of the Principal Director,
Highways Department,
Chennai-600 005.

3.The Special Chief Engineer,
Highways Department,
Construction & Maintenance,
Madurai.

4.The Divisional Engineer,
Highways Department,
Construction & Maintenance
Sivagangai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Memorandum No.32111/No.1(2)/2007 dated 23.12.2016 quash the same and consequently, direct the second respondent herein to appoint the petitioner under compassionate appointment in any suitable post on merit and in accordance with law without any further delay.

For Petitioner : Mr.V.S.Kumaraguru

For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader



O R D E R

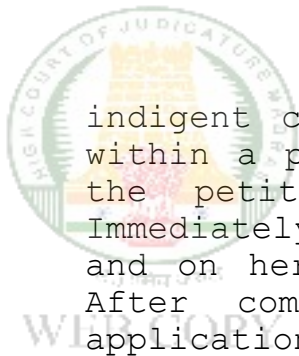
This writ petition has been filed to quash the Memorandum No.32111/No.1(2)/2007, dated 23.12.2016 passed by the second respondent and consequently, to direct the second respondent herein to appoint the petitioner under compassionate appointment in any suitable post on merit and in accordance with law without any further delay.

2. The case of the petitioner is that her father Late Kathirvel, who was employed as Watchman under the fourth respondent, died in harness leaving behind his wife and two minor daughters. The petitioner is the elder daughter. Subsequently, the petitioner's mother died leaving behind the petitioner and her sister. At the time of death of the parents, the petitioner and her sister are minors and they are not able to survive. However, with the help of benevolent person, the petitioner has completed her school studies and after attaining majority, the petitioner made an application to the second respondent on 19.06.2007 for compassionate appointment. The said application was rejected on the ground that the petitioner was not made an application within a period of three years. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner would submit that though the scheme provides three years time for making application for compassionate appointment from the date of death of the Government employee, the Authorities have vested with power of discretion to relax in deserving cases. In the present case, the petitioner is the minor child at the time of death of her father and subsequently, the petitioner's mother also passed away. There is no person available to take care of the petitioner and her sister. Thereafter, the petitioner pursued her studies with the help of an orphanage and noble persons and she successfully completed her studies and she came to know that she is entitled for compassionate appointment. Accordingly, she made an application for compassionate appointment. Instead of appreciating the earnest efforts taken by the petitioner, the respondent simply rejected her application on the ground of delay, which is unsettled one. Accordingly, he prayed for allowing the writ petition.

4.Mr.C.M.Marichelliah Prabhu, learned Additional Government Pleader for the respondents would submit that admittedly, the scheme provides three years time limit for making application. In the present case, the petitioner made an application after 17 years, which is belated one and the same cannot be considered. Hence, he prayed for dismissal of the writ petition.

5.This Court has to consider the twin test for compassionate appointment. The first one is whether the family is in



indigent circumstances and further, they have sent an application within a period of three years. In the present case, admittedly, the petitioner's father died in harness in the year 1989. Immediately thereafter, the petitioner's mother also passed away and on her own, the petitioner has completed her school studies. After completion of school studies, the petitioner made an application in the year 2007 for compassionate appointment. In respect of the compassionate appointment, a full bench of this Court elaborately considered the various aspects and passed a detailed order in **W.P(MD) No.7016 of 2011, dated 11.03.2020**, wherein, it has held as follows:-

"...12.While enunciating the principles governing compassionate appointments, the Full Bench in paragraph 29 of the judgment apart from having incorporated the rules that exist in the State of Uttar Pradesh laid down the following principles, which are extracted hereunder;

"29.We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i)A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basis object and purpose which is sought to be achieved;

(ii)There is no general or vested right to compassionate appointment.Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii)The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv)In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its member, together with the income from any other sources of employment;

(v)Where a long lapse of time has occurred



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since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application with the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family..”

6. On perusal of the above decision, it is clear that as per Rule 5, ordinarily an application for compassionate appointment must be made within a period of five years from the death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in case of undue hardship for dealing with the case in just and equitable manner. In the present case, the petitioner's father and mother passed away during short span of time. At that time, she is the minor and no other person is taking care. However, some benevolent person had taken care of her education and her future development. After completing her school studies, she made an application seeking compassionate appointment. Hence, the authority may exercise the discretionary power to



appointment. However, the authority, without exercising the discretionary power available, mechanically rejected the application on the ground of delay, which is unacceptable and unsustainable one. Hence, the impugned order liable to be set aside.

7. In view of the above observations, this Writ Petition is allowed and the impugned order passed by the second respondent herein vide Memorandum No.32111/No.1(2)/2007 dated 23.12.2016 is set aside and the matter is remanded back to the concerned respondent for fresh consideration and to pass orders within a period of twelve weeks from the date of receipt of a copy of this order, in the light of the decision made in W.P(MD) No.7016 of 2011, dated 11.03.2020, in Paragraph No.12. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CP

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Highways Department,
Fort St.George, Chennai-9.
- 2.The Principal Director,
Office of the Principal Director,
Highways Department,
Chennai-600 005.
- 3.The Special Chief Engineer,
Highways Department,
Construction & Maintenance,
Madurai.



4.The Divisional Engineer,
Highways Department,
Construction & Maintenance.
Sivagangai.

+1 CC to THE SPECIAL GOVERNMENT PLEADER(SR-1413[F] dated 20/01/2021)

+1 CC to Mr.V.S.KUMARAGURU, Advocate (SR-1437[F] dated 20/01/2021)

Order made in
W.P. (MD) No.6501 of 2017 and
W.M.P (MD) No.5098 of 2017
19.01.2021

NSM(CO)
SRS (10/03/2021) 6P : 7C