



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.7947 of 2017

and

W.M.P. (MD) .No.2822 of 2018

G.Rama Veera Sekaran

... Petitioner

Vs.

1.The Secretary to the Government,
Department of Backward Classes and Minorities Welfare,
Fort St. George, Chennai 600 009.

2.The Director,
Department of Backward Classes and Minorities Welfare,
Fort St. George,
Chennai 600 009.

3.The District Welfare Officer,
Department of Backward Classes and Minorities Welfare,
Sivagangai.

4.The District Collector,
Collectorate Office,
Sivagangai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent in Na.Ka.Y.1/747/2017, dated 13.01.2017 and quash the same, on the ground that the same is arbitrary, illegal and without jurisdiction, consequently direct the respondents to appoint the petitioner in any one of the suitable post on compassionate ground within a time frame to be stipulated by this Court.



For Petitioner

: Mr.V.Lakshmanan

For Respondents

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

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O R D E R

This writ petition has been filed challenging the impugned order passed by the third respondent in Na.Ka.Y.1/747/2017, dated 13.01.2017 and to quash the same and consequently direct the respondents to appoint the petitioner in any one of the suitable post on compassionate ground.

2. The case of the petitioner is that his father was working as a Watchman in the Government Most Backward Community and Welfare College Hostel, Sivagangai and died in harness on 01.01.1998, leaving behind the petitioner, daughter and wife as legal heirs. At the time of death of the petitioner's father, the petitioner was a minor and no eligible member is available in the family for making compassionate appointment. After completing 10th standard and attaining majority, the petitioner has submitted an application for compassionate appointment on 26.08.2016. However, the said application was rejected by the third respondent on 13.01.2017, on the ground that the application was not filed within a period of three years. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that at the time of death of the petitioners' father, he is a minor and after attaining majority, he filed an application for compassionate appointment. However, without considering the financial position of the petitioner's family and other aspects, the third respondent has rejected the same on the ground of delay. In support of his contentions, the learned counsel for the petitioner relied on a decision of this Court in the case of **K.Sankar v. the Commissioner, Corporation of Chennai** reported in **(2017(1) CWC 486)**, wherein, in Paragraph Nos.14 and 15, it is stated as follows:

"14.The aforesaid reason is not only in genuine but also totally unjust. A minor child at the age of 7 or 10 cannot give Application to the Employers seeking Compassionate Appointment. In this case as stated above, the petitioner and his younger brother were 10 & 7 years old at the time of mother's death and even at the time of father's death they were 7 & 4 years old. Both the parents lost their lives while they were in service in the hands of the Respondent-Corporation. There is no contrary



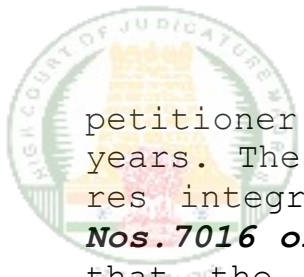
the petitioner and his family as the petitioner having lost both father and mother had been struggling even for survival. However, when such an indigent person has not been considered for Compassionate Appointment, this Court feels that there is no other case than the one brought before in this Writ Petition can be considered as a fit case for compassionate appointment.

15. As has been rightly pointed out by the learned counsel appearing for the petitioner, the 3 years rule is not a hard and fast rule and it can never stand as a ban or prohibition in considering the Application of indigent persons, who lost their near and dear in family, ie., father or mother, at their young age and seek appointment from the employer on attaining the majority. This Court in a judgement reported in *M.Uma v. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai -2* and another, 2010 (7) MLJ 644, held that the Application for the appointment of Compassionate ground shall not be rejected on the ground that it was filed after a lapse of time and the application has to be considered on its own merits. The learned Judge in the said judgment after following the number of judgments of the Hon'ble Supreme Court as well as this Court has passed the said order."

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that after lapse of 18 years from the date of death of the petitioner's father, the petitioner has submitted an application for compassionate appointment to the third respondent and his educational qualification is 10th standard discontinued. He would further submit that as per G.O.(Ms).No.120, Labour and Employment Department, dated 26.06.1995, the application for appointment on compassionate ground should be made within three years of the death of the Government servant and as per Government Lr.Ms.No.202, Labour and Employment Department, dated 08.10.2007, the time limit should be three years for filing an application from the date of death of Government servant and hence, he prays for dismissal.

5. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. In the present case, it is not in dispute that the petitioner's father passed away in the year 1998 and at the time of death of the petitioner's father, he is a minor and hence, he has submitted his application for compassionate appointment in the year 2016, after lapse of 18 years. It is evident that the



petitioner had applied beyond the prescribed period of three years. The issue involved in the present writ petition is no more res integra. Already the Full Bench of this Court in **W.P. (MD) Nos. 7016 of 2011, etc. Batch**, vide order dated 11.3.2020, has held that the outer limit for consideration of a candidature for compassionate appointment is only three years and that too subject to the scheme that is in existence.

7. This Court, while dealing with a similar case in **M. Vigneswaran - Vs - Govt. of Tamil Nadu (W.P. No. 25231 of 2014)**, vide order dated 09.12.2020, considering the decision of the Full Bench on the issue of compassionate appointment, held as under :-

"13. In **W.P. (MD) Nos. 7016 of 2011, etc. Batch**, vide order dated 11.3.2020, on a reference made by the learned single Judge of this Court relating to conflicting views in relation to compassionate appointment, the matter was placed before the Full Bench. The reference made to the Full Bench is as under :-

"Whether the view taken in A. Kamatchi's case holding that an application for compassionate appointment made even beyond three years of the death of the deceased needs consideration, is the correct law or the judgment of the Division Bench in N. Renugadevi's case, where a contradictory view has been taken, is the correct law?"

Tracing the lineage on the advent of compassionate appointment and the factors that are to be had in mind, while considering a case of compassionate appointment, the Full Bench sculpted the factors that needs to be taken into consideration while looking at a case relating to grant of compassionate appointment and for better understanding the same is extracted hereunder :-

(i) Compassionate employment cannot be made in the absence of rules or 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 dehors 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 breadwinner 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 dependents 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. (Refer **Umesh Kumar Nagpal Vs. State of Haryana** (1994) 4 SCC 138).

15. From the above, it is unambiguously clear that application for compassionate appointment should be made without undue delay and it should be considered strictly in accordance with the governing scheme and no discretion is vested with the authority and that the concept of compassionate appointment is only to meet the sudden crisis that has befallen the family on the death of the breadwinner.

16. From the above the main ingredient for considering a case for compassionate appointment is that it is only for the purpose of meeting the sudden crisis that has occurred due to the untimely death of the breadwinner. It is not that in all cases where the breadwinner breathes his last in harness, compassionate appointment, at any point of time, ought to be given as a matter of right.

17. The Full Bench, in the above said decision, after discussing the various Government Orders and also the laws propounded on the subject by the High Court as well as by the Hon'ble Apex Court, answered the reference in the following terms :-

"In view of the above, the reference is answered as under:-

a) Appointment on compassionate basis has to be strictly followed in accordance with the relevant G.O.'s or the scheme that has been framed by the employer. Any deviation from the scheme is not permissible.

b) In view of the above the judgment of the Division Bench in **E. Ramasamy Vs. Tamil Nadu Electricity Board** and the Secretary to Government Vs. Renugadevi, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in **A. Kamatchi Vs. The Chairman, Tamil Nadu**



Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down the correct proposition. Reference is answered accordingly."

8. From the conceptual proposition of law laid down by the Full Bench, it is implicitly clear that the appointment on compassionate basis should be strictly be in accordance with the Government Orders/the Scheme framed for the said purpose by the employer.

9. On the above proposition of law, it is evident that the very concept of giving a compassionate appointment is for the bereaved family to tide over the financial difficulties faced by it due to the untimely death of the breadwinner.

10. It should not be lost sight of that appointments to public offices have to comply with the requirements of Articles 14 and 16 of the Constitution of India. Compassionate appointment is in the nature of an exception to the ordinary norm of allowing equality of opportunity to other eligible persons to compete for public employment.

11. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority, such lapse of time on the part of the claimant will definitely lead to dilute the immediacy of the requirement. The time spent to attain majority cannot be a ground for claiming compassionate appointment. Indigency is the need that needs to be established, even within the threshold limit of three years, as is also evident from G.O. (Ms.) No.18, dated 23.01.2020, to decide on providing compassionate appointment. Holistically considering, the period of three years for moving an application for compassionate appointment is provided, which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority. However, the lower the age of the dependent would not be an attributing factor to extend the period, as such elasticity would have no ends to meet. Further, it should also not be out of context to state that the longer the period, the sustenance of the members of the family would by itself be an attributing factor to deny compassionate appointment.

12. For the reasons aforesaid, this Court is not inclined to interfere with the order passed by the third respondent as no case has been made out by the petitioner to substantiate his grievance. Accordingly, this Writ Petition, being devoid of merits, is



dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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 the Government,
Department of Backward Classes and Minorities Welfare,
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Sivagangai.
- 4.The District Collector,
Collectorate Office,
Sivagangai.

+1 CC to SGP (SR-1834[F] dated 22/01/2021)

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KM (26.02.2021) 7P 6C