



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.8236 of 2017

C.Sasikala

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Tirunelveli) Limited,
No.19, Trivandrum Road,
Vannarapettai Post,
Tirunelveli-627 001.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Tirunelveli) Limited,
Nagercoil Region,
Ranithottam, Nesamony Nagar,
Nagercoil-629 001.

... Respondents

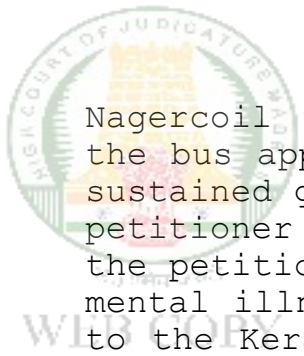
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records passed by the second respondent herein in his letter No.1978/A10/TNSTC(TVL)/NGL/2017, dated 01.03.2017 and quash the same and consequently, direct the respondents herein to consider the case of the petitioner for appointment on compassionate grounds.

For Petitioner : Mr.K.Vamanan
For Respondents : Mr.K.Sathiyasingh
Standing Counsel

O R D E R

The writ petition has been filed to quash the impugned order passed by the second respondent in Letter No.1978/A10/TNSTC(TVL)/NGL/2017, dated 01.03.2017 and consequently, to direct the respondents to consider the case of the petitioner for appointment on compassionate grounds.

2.The case of the petitioner is that the petitioner's husband was appointed as a Conductor in the year 1995 in the respondents' Corporation. While he was working in Collachel depot, he was allotted with route No.564-B. The said bus was plying in between



Nagercoil to Tirunelveli while nearing Kavalkinaru, the driver of the bus applied sudden break, thereby, the petitioner fell down and sustained grievous injurious and died in harness, leaving behind the petitioner and her daughter as legal heirs. At the time of death, the petitioner's daughter was aged 8 years old and she suffered from mental illness. For the purpose of taking treatment, she was taken to the Kerala Hospital. Therefore, the petitioner was not able to make an application for compassionate appointment within a period of three years. The petitioner's husband is the only bread winner of her family and she also faced huge financial crisis. Therefore, immediately after recovering from the illness of her daughter, the petitioner made an application in the year 2017 with a dealy of six years. However, the said application was rejected on the ground that the application was made beyond the period of three years. Challenging the same, the petitioner filed the present petition with the above said prayer.

3.The learned counsel for the petitioner would submit that the impugned order passed by the respondent reveals total non-application of mind and the State Government had passed G.O.Ms.No.18, Labour & Employment Department, dated 23.01.2020, wherein, a scheme has been provided for compassionate appointment and that the petitioner should be considered in consonance with the guidelines framed in the said Government Order. However, without advertng to the Government Order in a proper perspective, the petitioner's representation has been rejected mechanically, which requires interference at the hands of this Court. Further, the learned counsel appearing for the petitioner submitted that the very same issue came up for consideration before this Court in the Hon'ble Full Bench of this Court in ***W.P. (MD) Nos.7016 of 2011, etc. Batch***, vide order, dated 11.3.2020, wherein, this Court had held that an application for compassionate appointment must be made within a period of five years from the date of the deceased employee. However, the authorities vested with the discretion to relax the period in undue hardship for dealing with the case. Therefore, the respondents mechanically rejected the petitioner's application is not sustainable one and hence, she prayed for allowing this petition.

4.In support of his contention, the learned counsel relied on a decision of a Hon'ble Full Bench of this Court in ***W.P. (MD) Nos.7016 of 2011, etc. Batch***, vide order, dated 11.3.2020, wherein at paragraph No.12, it has been 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 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



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.."

5.The learned Standing Counsel for the respondents' Corporation would submit that though the petitioner's husband died in the year 2011, she made an application for compassionate appointment not within the limited period, however, the petitioner has made an application only in the year 2017 beyond the period of three years, which cannot be entertained. Hence, he prayed for dismissal of the writ petition.

6.I have considered the submissions made on either side and perused the materials available on record.

7.In the present case, it is seen that the petitioner's husband died in harness and leaving behind the petitioner and her daughter as his legal heirs and further it is averred that since the petitioner's daughter was suffering from illness and she went to the Hospital at Kerala for taking treatment, she was not able to make an application within the limited period of three years.

8. In the above background, it is necessary to refer the decision of this Court, whether the application made after five years can be entertained or not? For the risk of repetition, it is relevant to extract hereunder the relevant paragraphs of the decision rendered by the Full Bench of this Court(***cited supra***):

(v)Where a long lapse of time has occurred 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;

9. A perusal of the above decision, it makes it clear that the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must be weighed in determining as to whether a case for grant of compassionate appointment was made. Further, the Full Bench of this Court held that the application for appointment must be made within five years of the date of the death of the deceased employee. Further it is also held that 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.

10. In the present case, the petitioner-mother claimed that her daughter suffered with mental illness, for which, she was taken treatment in Kerala Institute of Medical Sciences. However, without analysing and appreciating the above said aspects, the respondents mechanically rejected the application is unsustainable one. Hence, this Court is of the view that the order impugned is deserved to be interfered with. Accordingly, the impugned order dated 01.03.2017 in Letter No.1978/A10/TNSTC(TVL)/NGL/2017 passed by the second respondent is set aside and the matter is remanded back to the second respondent for fresh consideration and the second respondent is directed to consider the same and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar

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

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Nagercoil Region,
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Nagercoil-629 001.

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-1444[F] dated 20/01/2021)

W.P. (MD)No.8236 of 2017
19.01.2021

sjj

MS/27.02.2021/6P.4C