



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2021

CORAM

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD) No.9968 of 2017

and

W.M.P. (MD) No.7631 of 2017

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Ezlumalai

... Petitioner

Vs

1.The Principal Secretary to
Government of Tamil Nadu,
Department of School Education,
Secretariat, Fort St. George,
Chennai.

2.The Director of Elementary Education,
DPI Office Compound,
College Road, Chennai-6.

3.The District Education Officer,
Pudukkottai.

... 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 of the third respondent in Na.Ka.No.3572/A1/2013, dated 20.02.2014 and quash the same as illegal and in consequence thereof directing the respondents to provide employment to the petitioner under compassionate appointment scheme at once.

For Petitioner : Mr.Sekar
for Mr.P.Ganapathi Subramanian
For Respondents : Mrs.S.Srimathy, Spl. GP

O R D E R

This writ petition is filed to issue a Writ of Certriorarified Mandamus, to quash the impugned order passed by the third respondent in Na.Ka.No.3572/A1/2013, dated 20.02.2014 and consequently, direct the respondents to provide employment to the petitioner under compassionate appointment scheme.

2.The case of the petitioner is that the petitioner's father, namely, Chellam was working as Head Master of Panchayat Union Primary School, Viralimalai and died on 03.08.1994, while he was in service, leaving behind the petitioner, his old aged mother, three daughters and two sons as his legal heirs. The petitioner is the youngest son of the family. The petitioner's mother did not make an application at the relevant point of time and at the time of death of his father, the petitioner was aged about 8 years. No claim was made for compassionate appointment for the other members of the



family as well. Since the petitioner's family was suffering and finding it difficult to make both ends meet, on attaining the age of majority, the petitioner made an application for compassionate appointment in the year 2006. The said application was rejected by the second respondent vide order dated 02.07.2007, which was challenged before this Court in W.P.(MD)No.2506 of 2013. This Court by an order dated 16.09.2013 set aside the order in the light of decision of this Court in W.P.(MD)No.21596 of 2009 and remanded the matter back to the authorities. Thereafter, the present impugned order was passed on the ground that the application of the petitioner is beyond the period of three years and in view of G.O.Ms.No.42, dated 12.03.2007, the authorities cannot wait till the minor son attained majority for providing compassionate appointment. Further, the petitioner's family not suffered any financial crisis and further all the legal heirs are also married and settled in their life, the application was rejected. Challenging the same, the present petition is filed with the above said prayer.

3.The learned counsel appearing for the petitioner submits that the petitioner's application has not been considered in accordance with law and therefore, this Court may issue a direction to the respondents to pass orders on the said representation. It is further submitted that the three years time limit stipulated is not mandatory and it is only directory and the respondents have to consider the indigent circumstances of the family while rejecting the application. The respondents have not properly considered the application of the petitioner for compassionate appointment, keeping in mind the indigent circumstances and the rejection of the application on the ground of the delay, is wholly sustainable in law.

4.The learned Standing Counsel appearing for the respondents submits that the death of the petitioner's father is in the year 1994, while the application for compassionate appointment for her daughter has been filed in the year 2006, which is after a lapse of almost 12 years. At the time of death of the petitioner's father, the petitioner was aged only about 8 years and his siblings, four in number, have already been married. It is further submitted that no representation for compassionate appointment has been filed for almost 12 years and out of the blue, the petitioner has filed the representation for compassionate appointment. Further, the sisters of the petitioner are married, which clearly shows that the family is not in indigent circumstances. Neither the family being in indigent circumstance nor the representation of the petitioner being on time, the rejection of the representation is wholly permissible and, therefore, no interference is warranted with the order impugned herein.

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



6. 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 following reference was made to the Full Bench :-

"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?"

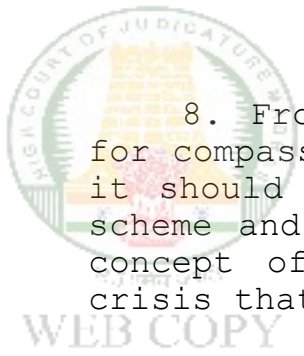
7. Tracing the advent of compassionate appointment and the factors that are to be borne in mind, while considering a case of compassionate appointment, the Full Bench sculpted the factors that needs to be taken into consideration while looking at a case relating to grant of compassionate appointment 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).*



8. 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.

9. 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.

10. 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."

11. In **Chief Commissioner, Central Excise and Customs, Lucknow v. Prabhat Singh ((2013) 1 UPLBEC 357)**, the Supreme Court has addressed words of caution in the following observations:

"We are constrained to record that even compassionate appointments are regulated by norms. Where such norms have been laid down, the same have to be strictly followed.. The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim is an anti thesis, for the purpose for which



compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved..

Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion."

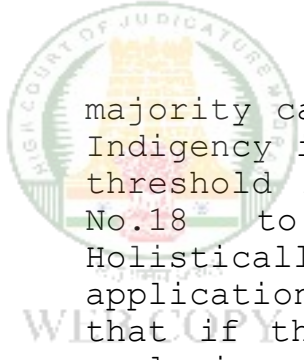
(Emphasis Supplied)

12. From the conceptual proposition of law laid down by the Full Bench as also the decision of the Hon'ble Apex Court, 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 and that the circumstances in which the family is placed is of primary concern while deciding on giving compassionate appointment and discretion should not be a misplaced sympathy or compassion.

13. 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. Further, indigency is one of the relevant factors to be borne in mind while deciding on providing compassionate appointment.

14. 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.

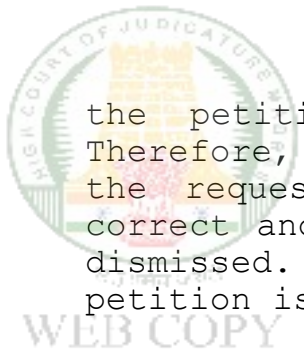
15. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of 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 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.

16. In the case on hand, the petitioner's father died leaving behind the petitioner, his siblings and his mother. As on date, the petitioner's siblings have been married and have settled in their lives. At the time of death of the petitioner's father, the petitioner was aged about 8 years. The petitioner being a minor on the date of death of his father, it is not incumbent on the part of the respondents to appoint the petitioner on compassionate grounds on his attaining majority, as 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. The fact that his siblings have been married and settled in their lives even after the death of his father clearly shows that there is no indigency and the indigency, if any, claimed by the petitioner, in his representation, is only for the purpose of arousing the sympathies of the employer/respondent herein for compassionate appointment. Further, the representation for compassionate appointment for has been given after a period of 12 years and even according to the petitioner, no representation has been given previously. Such being the case, delay is fatal to the case of the petitioner and he cannot, as a matter of right, claim appointment on compassionate grounds. Delay in seeking such a claim, is an anti thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved. Such being the case, the application of the petitioner for compassionate appointment not being within the threshold period of three years and further the indigent circumstances in which the family is suffering having not been established and further the fact that the longer the delay, the greater the sustenance of the family not to be ruled out, this Court is of the considered opinion that the respondents, on proper application of mind, has rejected the claim for compassionate appointment, which does not call for any interference from this Court.

17. In the light of the above decisions and also considering the fact that the petitioner's family is not in a penurious condition,



the petitioner is not eligible for compassionate appointment. Therefore, the impugned order passed by the 3rd respondent rejecting the request of the petitioner for compassionate appointment is correct and sustainable in law. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// 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 Principal Secretary to
Government of Tamil Nadu,
Department of School Education,
Secretariat, Fort St. George,
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- 2.The Director of Elementary Education,
DPI Office Compound,
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