



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.21929 of 2016

and

W.M.P. (MD) .No.15675 of 2016

T.Venkatesh

... Petitioner

Vs.

1.The Director General of Police,
Chennai.

2.The Commissioner of Police,
Chennai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the first respondent in Na.Ka.160731/C.A.1/2010 and quash the same and consequently direct the respondents to appoint the petitioner in any suitable post on compassionate grounds due to the death of his father K.Thavasi.

For Petitioner : Mr.Mohammed Ayub
for M/s.Veera Associates

For Respondents : Mr.M.Muthugeethayan
Special Government Pleader

O R D E R

This writ petition is filed for a writ of certiorarified mandamus, to call for the records pertaining to the impugned proceedings issued by the first respondent in Na.Ka.160731/C.A.1/2010 dated 10.07.2010 and quash the same and consequently direct the respondents to appoint the petitioner in any suitable post on compassionate grounds due to the death of his father K.Thavasi.

2. By consent of both parties, the writ petition is taken up for final disposal.

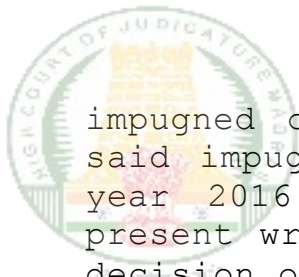
3. Heard the learned counsel appearing for the petitioner and Mr.M.Muthugeethayan, learned Special Government Pleader, who takes notice for the respondents.



4. The case of the petitioner is that the petitioner's father, namely, K.Thavasi, worked as a Head Constable under the second respondent and while he was in service, due to harness, he died on 17.01.2005 leaving behind the petitioner's mother, the petitioner and his sister. Initially, the petitioner's sister gave an application on 10.11.2005 before the second respondent seeking for an appointment under compassionate ground and the said application has been submitted well within the time of three years for which the second respondent sent a communication dated 26.04.2010 to her to appear before the Selection Committee with all necessary documents and certificates on 08.06.2010. On the said date, the petitioner appeared before the second respondent and requested to provide any suitable appointment to him instead of his sister, since she got married. However, the said application was rejected on 10.07.2010 on the ground that as per G.O.Ms.560 Employee and Employment Department, dated 03.08.1977, married daughter is not entitled for compassionate appointment and as per G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, the petitioner is not entitled as the petitioner's application is beyond three years from the date of death of the petitioner's father. Challenging the said rejection order, this writ petition has been filed.

5. The learned counsel for the petitioner would submit that the impugned order was passed on 10.07.2010 inadvertently only on the ground that the application was not made within three years from the date of death of the employee. As the petitioner was a minor at the time of the death of his father, he could not submit any application for compassionate appointment within three years. Just because there is a delay in submitting the application for the said reason by the petitioner for compassionate appointment, it cannot be said that the family of the deceased Government servant has got over the indigent circumstances. Hence, he prays for allowing this writ petition.

6. Per contra, the learned Special Government Pleader would submit that though initial application was made by the petitioner's sister, however, she is not interested to secure the job on compassionate appointment and further she made a request to convert the application in favour of her brother, which is impermissible, unless the petitioner satisfied the eligibility criteria, as the very purpose of giving compassionate ground appointment is only to help the family of the deceased Government Servant to tide over the sudden indigent circumstances unexpectedly created by the sudden demise of the Government Servant who died in harness and the spirit of the scheme on compassionate ground appointment is to relieve the distress of a family as an emergency measure. Further, he submitted that the



impugned order was passed in the year 2010 and challenging the said impugned order, the present writ petition was filed in the year 2016 without proper explanation for delay in filing the present writ petition. In this regard, reliance was placed on the decision of 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. Hence, this writ petition has to be dismissed on the ground of lapses.

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 9312.2020, considering the decision of the Hon'ble 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.

<https://hcservices.ecourts.gov.in/hcservices/> (11) 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**



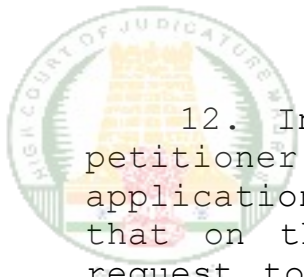
Electricity Board and the Secretary to Government Vs. Renugadevi, lays down the correct law and the judgment of the Division Bench dated 06.08.2013 in A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board, which is contrary to the scheme framed by the Tamil Nadu Electricity Board does not lay down 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 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. In the case on hand, the application submitted by the petitioner's sister has not persuaded by her. However, the said application came for consideration on 08.06.2010 and it is alleged that on the said date, ie., 08.06.2010, the petitioner made a request to the second respondent to provide suitable appointment to him instead of his sister. However, there is no proof available for such a request was made on the said date. Thereafter, the said application was rejected on 10.07.2010 on the ground of laches, which was challenged before this Court in the year 2016, ie., after a lapse of five years and there is no proper explanation for such delay in filing the present writ petition. The purpose of providing employment on compassionate basis is to mitigate the hardship of the family which has arisen due to the death of the employee and such appointment therefore has to be provided immediately to ensure that the family tide over the sudden crisis which has arisen due to the death of the employee. The dependent of a deceased employee cannot be permitted to convert a tragedy into a bonanza. If the compassionate appointment is treated as one more source of recruitment, then it will be violative of Article 16 of the Constitution of India. It is settled by various decisions of the Hon'ble Supreme Court, an appointment on compassionate basis is a concession given by the employer to help the family of the deceased, who has died in harness, to get over the immediate financial crisis. The scheme under which compassionate appointment can be given to be construed strictly. The ground on which the petitioner claims an appointment on compassionate grounds is that taking into consideration of the earlier application sent by his sister, the petitioner may be considered for compassionate appointment, which is not permissible in law.

13. For the reasons aforesaid, this Court is not inclined to interfere with the order passed by the first 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, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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 Director General of Police,
Chennai.

2.The Commissioner of Police,
Chennai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-4318[F] dated
10/02/2021)

+1 CC to SGP (SR-4291[F] dated 10/02/2021)

W.P. (MD)No.21929 of 2016
09.02.2021

KM (08.03.2021) 7P 5C