



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04.02.2021

CORAM:

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

W.P. (MD)No.23153 of 2016

and

W.M.P (MD)Nos.16625 and 16626 of 2016

WEB COPY

R.Vijayalakshmi

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Madurai Region,
Madurai-625 001.

2.The Madurai District Pandian Consumer's
Co-operative Wholesale Stores Ltd., A.1437,
Rep by its Managing Director/Joint Registrar
162, East Veli Street,
Madurai-625 001.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order Na.Ka.No.1513/2013/Pa.Tho.1 dated 23.12.2014 passed by the 2nd respondent and order Na.Ka.1236/2016/Nu.Ku dated 01.11.2016 passed by the 1st respondent and quash the same and consequently, direct the respondents to grant regular appointment to the petitioner, on the basis of the petitioner's qualification under compassionate grounds in the 2nd respondent store within a time limit to be fixed by the Court.

For Petitioner : Mr.R.M.Makesh Kumaravel

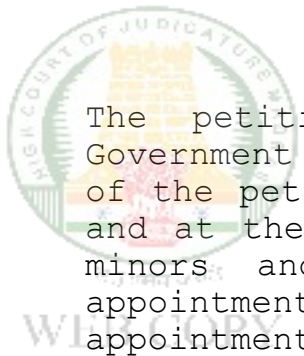
For Respondent : Mr.P.Mahendran

Additional Government Pleader

O R D E R

T writ petition is filed by the petitioner, to call for the records relating to the order Na.Ka.No.1513/2013/Pa.Tho.1, dated 23.12.2014 passed by the second respondent and order Na.Ka.1236/2016/Nu.Ku, dated 01.11.2016 passed by the first respondent and quash the same and consequently, direct the respondents to grant regular appointment to the petitioner, on the basis of the petitioner's qualification under compassionate grounds in the second respondent store.

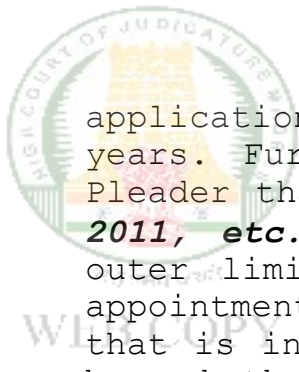
2.The case of the petitioner is that mother viz., Mrs.V.S.Selvavalli, was working as a Sales Assistant in the second respondent Co-operative Stores (a unit of Co-operative Department of Government of Tamil Nadu) and died on 10.05.2003, while in service, leaving behind father, one son and two daughters as legal heirs.



The petitioner's father was illiterate and not eligible for Government job and elder sister got married, during the life time of the petitioner's mother. The petitioner and brother are twins and at the time of death of the petitioner's father, they are the minors and they could not able to apply for compassionate appointment. In such circumstances, there was a ban on compassionate appointment from 29.11.2001 to 21.02.2006. After attaining majority, the petitioner's brother viz., Mr.R.Vijayaragunathapandian, has made an application, on 14.09.2006 to the second respondent. Pursuant to which, the second respondent directed the petitioner's brother to produce the death certificate, legal heir certificate, educational qualification certificate in the prescribed format. As directed by the second respondent, the petitioner's brother has also produced all the certificates, but the second respondent did not take any action, till 2014. Thereafter, the petitioner has made an application on 01.07.2014 and 11.12.2014 seeking appointment on compassionate ground, in continuation of brother's application pending with the second respondent from 2006 to 2014. While so, the second respondent rejected the petitioner's application as well as her brother's application on 23.12.2014 on the ground that the petitioner's brother has made an application beyond the period of three years. Again the petitioner has made an application on 16.0.2015 along with 'No Objection Certificate' given by her brother and sister. That application was also rejected by the first respondent on 01.11.2016. Challenging the same, the present writ petition is filed.

3.The learned counsel appearing for the petitioner submitted that the earlier application made by the petitioner's brother was not considered and in continuation of the earlier application, the petitioner has made an application on 01.07.2014 and the same was rejected on the ground of delay and laches. Further submitted that since the petitioner's elder sister already got married and her brothers also not interested to get compassionate appointment, the petitioner alone is the eligible person for compassionate appointment and hence, the petitioner has made an application in the year 2014. Without considering the facts, the respondent has mechanically rejected the petitioner's application is not unsustainable one. Hence, he prays for the aforesaid relief in the present writ petition.

4.Per contra, the learned Additional Government Pleader appearing for the respondent submitted that it is an admitted fact that immediately after the death of her mother, the petitioner's brother has made an application within a period of three years and the same was rejected by the respondent on the ground of delay and laches and thereafter, the petitioner has made an application in the year 2014, which is not continuation of the earlier application. Further submitted that the legal heirs have to make an application independently by enclosing the copy of the 'No Objection Certificate' given by other legal heirs. In the present case, the



application made by the petitioner is beyond the period of three years. Further, it is submitted by the learned Addl. Government Pleader that 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. The petitioner having given her application beyond the period of three years and there being no scheme for compassionate appointment and hence, the representation was rejected, which requires no interference.

5. T 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 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 t 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 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 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."

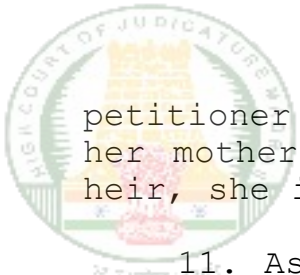
6. From the conceptual proposition of law laid down by the Full Bench, it is implicitly clear that the appointment on compassionate basis should be strictly be in accordance with the Government Orders/the Scheme framed for the said purpose by the employer.

7. 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.

8. 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.

9. 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 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, dt. 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 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 period, the sustenance of the members of the family would by itself be an attributing factor to deny compassionate appointment.

10. In the case on hand, it is not in dispute that on the date of death of the petitioner's mother, the petitioner was minor and on acquiring the requisite educational qualifications and also on attaining the age of majority, viz., 18 years, the petitioner submitted an application for compassionate appointment, which has been rejected. It is evident that the petitioner had applied beyond the prescribed period of three years. The ground on which the



petitioner claims an appointment on compassionate grounds is that her mother died in harness and, therefore, as her surviving legal heir, she is entitled to compassionate appointment.

11. As pointed out above, the intent and purpose for which the benevolent act is intended is to alleviate the poverty of the distressed family at the crucial hour and to provide it with financial stability. Therefore, the plea of the petitioner to direct the respondents to provide the relief of compassionate appointment to the petitioner by issuing appropriate directions would be an exercise, beyond the scope and ambit of compassionate appointment and issuing such a direction would defeat the very purpose for which the said benevolence has been granted to deserving individuals.

12. For the reasons aforesaid, the Court is not inclined to interfere with the order passed by the respondents as no case has been made out by the petitioner to substantiate her grievance. Accordingly, the writ petition, being devoid of merits, is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Joint Registrar of Co-operative Societies,
Madurai Region,
Madurai-625 001.

2. The Madurai District Pandian Consumer's
Co-operative Wholesale Stores Ltd., A.1437,
Rep by its Managing Director/Joint Registrar
162, East Veli Street,
Madurai-625 001.

+1 CC to M/s.GP (SR-3775[F] dated 08/02/2021)

+1 CC to M/s.R.M.MAKESH KUMARAVEL, Advocate (SR-3706[F] dated
08/02/2021)

W.P. (MD)No.23153 of 2016

04.02.2021

(PK) CO/AP (23/02/2021) 6P 5C

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