



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.20293 of 2018

and W.M.P.(MD).No.18054 of 2018

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S.Ramadevi

... Petitioner

Vs.

1.State through Secretary to Government,
Rural Development Department,
Fort St. George, Chennai.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

3.The Block Development Officer,
Vilathikulam Taluk,
Thoothukudi District.

4.The Tahsildar,
Vilathikulam Taluk Office,
Thoothukudi District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.Val2/36881/06, dated 14.12.2007 and quash the same and consequently, direct the respondents to provide employment to the petitioner on compassionate grounds based on the Educational Qualification in the respondent's Department.

For Petitioner : Mr.V.Muthukamatchi

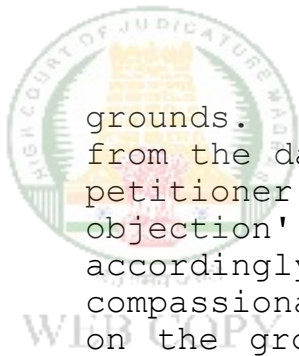
For Respondents : Mr.P.Mahendran

Additional Government Pleader

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

2.The petitioner herein is the son of late D.Subburaj, who was employed as a driver in the Vilathikulam Panchayat Union. The petitioner's father died on 18.08.2003, while in service and he was survived by his wife, one son and one daughter, who is the petitioner herein. After the death of the petitioner's father, her brother namely S.Ramesh had made an application to the second respondent, on 31.05.2006, seeking for appointment on compassionate



grounds. The said application was within a period of three years from the date of the death of the employee. Subsequently, since the petitioner's brother had not opted for the job, he had given 'no objection' in favour of the petitioner herein, who is his sister and accordingly, she had made an application, on 18.07.2007, seeking for compassionate appointment. The said application has been rejected on the ground that it is belated, since it was made after three years from the date of the death of the Government Employee. The rejection order is put under challenge in the present writ petition.

3.The learned counsel for the petitioner would submit that the original application for compassionate appointment was made within three years from the date of the death of the Government Employee and therefore, the present application by the petitioner is the continuation of the same and hence, cannot be rejected stating that it has been belatedly made.

4.The learned Additional Government Pleader, on the other hand, would submit that the rejection order was passed way back in the year 2007 and the petitioner had chosen to file the writ petition only after 11 years and therefore, the writ petition is liable to be dismissed on the ground of laches. He also submitted that since the guidelines described for consideration of an application seeking for compassionate appointments requires the legal heir to make an application, within three years from the date of the death of the employee and the petitioner herein had made the application after the expiry of the three years, the rejection cannot be found fault with.

5.Certain brief facts with regard to the consideration of an application for compassionate appointment requires to be mentioned here. As on the date of consideration, the guidelines for consideration have been streamlined and comprehensive factors have been stipulated by the Government in G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020. The said Government Order is in supersession of all the earlier Government Orders, in which, guidelines have been stipulated for consideration of an application for compassionate appointment.

6.Likewise, various court orders have also been passed touching upon the factors for consideration of an application and in two decisions of this Court in **A.Kamatchi Vs. The Chairman TNEB**, reported in **2013(2) LWC 758** and **The Secretary to Government Vs. Ronukadevi** passed in **W.A.No.269 of 2012**, dated 04.06.2012, the conflicting decisions were referred to a Full Bench and by an order, dated 11.03.2020, the reference was answered.

7.The crucial question that arises for consideration in the present writ petition is as to whether the comprehensive guidelines issued in G.O.Ms.No.18, dated 23.01.2020, or the Judgment of the



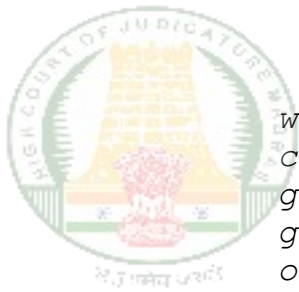
Honourable Full Bench passed in the W.P.No.7016/2012 etc., could be relied upon for the purpose of proceeding with the present case.

8. In the instant case, the petitioner's request for compassionate appointment was rejected in the year 2007. When the issue as to whether the subsequent developments relating to the change in the guidelines for consideration of an application for compassionate appointment came up for consideration before the Honourable Supreme Court in a recent judgment passed in the case of **N.C.Santhosh Vs. State of Karnataka and others** reported in **2020 7 SCC 617**, it was held that the yardstick that requires to be applied for the purpose of consideration would be the norms that prevailed on the date of consideration of the application for compassionate appointment. The relevant portion of the order reads thus:

"17. A two judges bench headed by Justice Uday U. Lalit noticed the Supreme Court's view in SBI vs. Raj Kumar (supra) and MCB Gramin Bank vs. Chakrawarti Singh (supra) on one side and the contrary view in Canara Bank & Anr. vs. M. Mahesh Kumar (supra) and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in State Bank of India & Ors. vs. Sheo Shankar Tewari⁶ the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

18. The above discussion suggest that the view taken in Canara Bank & Anr. vs. M. Mahesh Kumar (supra) is to be reconciled with the contrary view of the coordinate bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellants counsel on Canara Bank & Anr. vs. M. Mahesh Kumar (supra) as also the opinion of the learned Single Judge of the Karnataka High Court in Uday Krishna Naik vs. State of Karnataka & Ors.⁷, it can not be said that the appellants claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the Government employee.

19. In the most recent judgment in State of Himachal Pradesh & Anr. vs. Shashi Kumar⁸ the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord



with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy.

20. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

9.Thus, there has arisen a situation, whereby, the petitioner's application was rejected on certain regulations, which prevailed in the year 2007 and the proposition was subsequently, diluted through the subsequent decisions of the Full Bench, as well as through G.O.Ms.No.18, dated 23.01.2020. However, by applying the ratio laid down in *N.C.Santhosh's* case supra, it can be held, that the norms that prevailed on the day when the petitioner's application was rejected by the respondents, would be the yardstick for consideration. Consequently, the subsequent decisions or the Government order, may not have applications in the present case.

10.In this background, when the mode for consideration of an application for compassionate appointment, which was rejected on the ground that it was not submitted within the stipulated period and subsequently, submitted by the legal heir belatedly, came up for consideration before the Honourable Apex Court in ***Syed Kadim Hussain Vs. State of Bihar***, reported in **2006 (9) SCC 195**, the Honourable Supreme Court has held that when the widow had submitted the application in time to the authorities and the same was rejected without assigning reasons, the subsequent application which was belatedly made by her son, after he attained the age of 18 years, would be within time. The relevant portion of the order reads thus:

"5.We are unable to accept the contention of the Counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the Appellant

<https://hcservices.ecourts.gov.in/submit> Submitted the Application he was 13 years' old



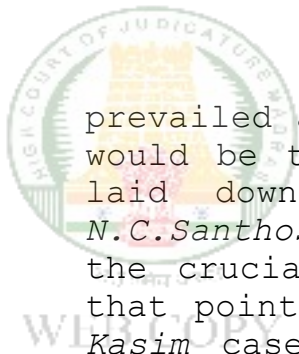
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and the Application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the Application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting Application.

6.As the widow had submitted the Application in time the authorities should have considered her Application. As eleven years have passed she would not be in a position to join the Government service. In our opinion, this is a fit case where the Appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the Appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the Respondent authorities to consider the Application of the Appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The Appeal is disposed of in the above terms. No costs."

Similar claim of the deceased Tamil Nadu Electricity Board Employee was considered and relief granted by the Division Bench of this Court in Indirani Amal V. Chief Engineer, TNEB, W.A.No.3050 of 2003, dated 08.03.2005 (P.Sathasivam, J (as he then was) and S.K.K., J). The said decision was confirmed by the Supreme Court in Civil Appeal No.2039 of 2006, dated 30.03.2010. Another Division Bench of this Court in W.A.No.42 of 2007, dated 02.07.2009 also took the same view, which was also confirmed by the Supreme Court in S.L.P.(C).No.8305 of 2010, dated 06.07.2010. The contra view taken by another Division Bench of this Court was set aside by the Supreme Court in Civil Appeal No.2858-2859 of 2010, dated 30.03.2010."

11.When such a legal proposition held the field for a considerable time, atleast when the impugned rejection order was passed in the present case, it can be construed that the law that



prevailed at the time when the petitioner's request was considered, would be the decision in *Syed Kasim* (supra). In view of the law laid down by the Honourable Supreme Court in the case of *N.C.Santhosh* (supra) that the appropriate norms to be considered on the crucial date of consideration would be the law prevailing at that point of time and therefore, in view of the decision in *Syed Kasim* case (supra), the petitioner's application, which was made after he completed the age of 18 years, may not be termed as a belated application. Consequently, the reasoning adduced by the respondent in the impugned order cannot be sustained.

12.For the foregoing reasons, the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.Val2/36881/06, dated 14.12.2007, is set aside and the matter is remanded back to the second respondent herein. Consequently, the second respondent herein shall consider the petitioner's application, in the light of the observations made in this order and without reference to the delay in making the application and pass favourable orders, within a period of three months from the date of receipt of a copy of this order.

13.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI ACT)

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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

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Rural Development Department,
Fort St. George, Chennai.

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4.The Tahsildar,
Vilathikulam Taluk Office,
Thoothukudi District.

+1 CC to M/s.V.MUTHUKAMATCHI, Advocate (SR9346[F] dated 08/03/2021)

+1 CC to M/s.SPL GP (SR-9484[F] dated 08/03/2021)

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