



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) No.11228 of 2017

and

W.M.P. (MD) No.8613 of 2017

Annapushbam

... Petitioner

Vs.

1. The Secretary to Government,
Civil Supplies and Consumer Protection Department,
Government of Tamilnadu,
Secretariat, Chennai-9.

2. The Managing Director,
Tamilnadu Civil Supplies Corporation Ltd.,
12, Thambusamy Salai,
Keelpauk, Chennai-10.

3. The Regional Manager,
Tamil Nad Civil Supplies Corporation Ltd.,
Tuticorin-8.

... 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 pertaining to the proceedings the third respondent in Na.Ka.No.E10/770/2016 dated 05.02.2016 and quash the same and direct the respondents to provide suitable appointment to the petitioner's daughter namely Amutha on compassionate ground and to pass appropriate orders within a period that may be fixed by this Court.

For Petitioner	: Mr.V.Kannan
For R1 & R2	: Mr.A.Karthick, Government Advocate
For R3	: Mr.S.Ramasamy Standing Counsel

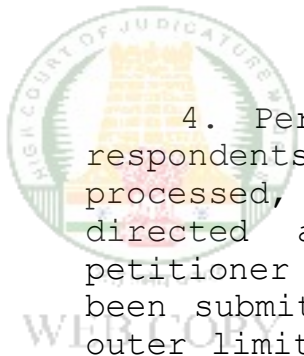
O R D E R

This writ petition is filed by the petitioner, to call for the records pertaining to the proceedings of the third respondent in Na.Ka.No.E10/770/2016 dated 05.02.2016 and quash the same and further to direct the respondents to provide suitable appointment to the petitioner's daughter, namely Amutha on compassionate ground.



2. The case of the petitioner is that the petitioner's husband viz., Balachandran, while working as Junior Assistant in the Regional Office of the Tamil Nadu Civil Supplies Corporation Ltd., at Tuticorin, was diagnosed with H.I.V and while undergoing treatment in Meenakshi Mission Hospital at Madurai died in harness on 18.06.2003 leaving behind the petitioner and her four minor daughters and his aged parents as his legal heirs. At the time of death of her husband, the petitioner's daughters were aged about 16, 11, 8 and 5 years respectively. Therefore, the petitioner made an application to the respondents for appointment on compassionate grounds. The third respondent, by his proceedings, dated 31.07.2007, called upon the petitioner to affix her signature in the necessary forms and papers for the purpose of sending necessary proposal for compassionate appointment. However, the petitioner was not able to appear before the office of the third respondent on the ground that the petitioner was also suffering from H.I.V and she was also under treatment. Whiles, for the purpose of compassionate appointment, an Employment Assistance Programme was in place, framed by the respective Government Departments or Corporations or Statutory Bodies in view of the aforesaid scheme, the petitioner did not pursue the matter further on the premise that she would be provided with compassionate appointment under the scheme. However, as no compassionate appointment was provided to the petitioner, she filed a representation to the third respondent for providing employment on compassionate ground either to her or to her elder daughter. However, the third respondent rejected the petitioner's claim by his proceedings, dated 05.02.2016, stating that the petitioner failed to appear before his office pursuant to the application for compassionate appointment. Aggrieved over the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioner submitted that the application of the petitioner is well within the period mandated by the various Government Orders pertaining to compassionate appointment. It is the further submission of the learned counsel for the petitioner that the non-appearance of the petitioner before the 3rd respondent was only on account of the disease suffered by the petitioner and the petitioner, after recouping herself, had approached the respondents with the representation. It is the further submission of the learned counsel for the petitioner that the original application of the petitioner was not rejected by the respondents, but the third respondent, vide his proceedings dated 31.07.2007 had only directed the petitioner to appear before him and in the absence of any rejection, the subsequent representation filed by the petitioner should only be treated to be in continuity to the said application and cannot be treated as a fresh application and, therefore, the order of rejection passed by the 3rd respondent is wholly unjustified and deserves interference at the hands of this



4. Per contra, learned Government Advocate appearing for the respondents 1 and 2 submitted that though the earlier application was processed, the petitioner failed to appear before the authority, as directed and, therefore, the representation submitted by the petitioner could only be deemed to be a fresh application, which has been submitted well beyond the period of three years, which is the outer limit to consider the case for compassionate appointment. The third respondent has rightly rejected the application of the petitioner and therefore, no interference is warranted with the order passed by the third respondent.

5. This Court bestowed its undivided attention to the contentions advanced by the learned counsel on either side and also perused the materials available on record.

6. The facts in issue are not in dispute. The husband of the petitioner, due to sufferance of H.I.V., died in harness on 18.06.2003, leaving behind the petitioner and four daughters, who were minors at the time of death of her husband. It is equally admitted that the petitioner had submitted application for compassionate appointment well within the prescribed time and in furtherance to the same, she was asked to appear before the 3rd respondent for the purpose of processing the application. However, the petitioner, due to cruelty of fate, also was suffering from H.I.V., which precluded her from appearing before the 3rd respondent. It is not the case of the respondents that the petitioner was not suffering from H.I.V., though the petitioner has put pen on paper in the form of affidavit stating that she was also suffering from H.I.V., and was taking treatment for the same.

7. True it is that the non-appearance of the petitioner before the 3rd respondent for the purpose of compassionate appointment is staring at her. However, equally it also stares on the face of the 3rd respondent that no order has been passed on the application of the petitioner for compassionate appointment, but rejection order has been passed only on the representation of the petitioner, which clearly means that all along, the application of the petitioner was subsisting. Therefore, for all purposes, the application of the petitioner for compassionate appointment is deemed to be pending consideration before the 3rd respondent and that the said application of the petitioner is well within time.

8. Be that as it may. It is evident from the materials on record, which has been accepted by either side that a scheme is in vogue for providing compassionate appointment and that the petitioner has applied only under the said scheme.

9. In this regard, it is to be pointed out that the Government has issued a composite Government Order in G.O. Ms. No.18, Labour & Employment Department, dated 23.1.20, on the lines highlighted in the

<https://hccases.judges.gov.in/InSpecs>



decision of the Full Bench of this Court in W.P. (MD) Nos.7016 of 2011, etc., Batch dated 11.3.2020.

10. **W.P. (MD) Nos.7016 of 2011, etc. Batch**, landed before the Full Bench of this Court on a reference made by the learned single Judge of this Court relating to conflicting views in relation to compassionate appointment, and 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?"

11. Tracing 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 vide order dated 1.3.2020, held as under:-

(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 de hors 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).



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."

12. 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.

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. 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.

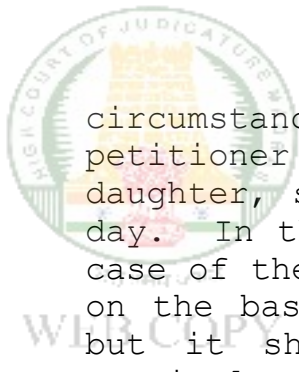
14. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. If a dependent who sleeps over and does not make any effort by the reason of his own incapacity, which also includes the dependent-claimant not having attained the age of majority, such lapse of time on the part of the claimant will definitely lead to diluting the immediacy of the requirement.

15. Indigency is one of the governing factors, which has necessitated the fixing of three years cut-off period for the purpose of filing application for compassionate appointment. In the case on hand, it is not in dispute that a scheme has been framed for providing compassionate appointment and that the petitioner has also filed the application for compassionate appointment well within the cut-off period of three years.

16. The period of three years for moving an application for compassionate appointment is provided taking into consideration the need of the family to come out of the sudden shock and depression, which it has suffered on losing its breadwinner and their sole hope for survival.

17. In the case on hand, it is not in dispute that the deceased has left over his wife and four daughters, all minors at the relevant point of time, in all about 5 persons, who were surviving on the earnings of the deceased. Out of the blue, the deceased having left his mortal coil, the shock, pain and suffering that would have engulfed the family should also be borne in mind, with reference to the disease suffered by the deceased, which has been the cause of his death. However, inspite of the same, the petitioner, viz., the wife of the deceased had filed her application for compassionate appointment well in time. However, as admitted by the parties, the petitioner has not appeared before the 3rd respondent on the particular day, when she was asked to report for completing the formalities for the purpose of compassionate appointment. However, it is to be pointed out that the non-appearance of the petitioner has not resulted in passing any order of rejection of appointment to the petitioner. To put it in another way, the application of the petitioner was put in cold-storage by the respondents without acting on it.

18. The petitioner pleads that she was not in a position to appear before the 3rd respondent on the designated day for the reason that she was also the victim of H.I.V., and that she was taking treatment for which has not been disputed by the respondents. The above



circumstances necessitated the filing of the representation by the petitioner for providing the compassionate appointment to her daughter, so that the family can make ends meet and have two meals a day. In this backdrop, the respondents ought to have considered the case of the petitioner on the touchstone of humanity and not strictly on the basis of legality. Legality is a necessity to be followed, but it should also be applied with humane touch, wherever the survival and smile of the family is at stake. Legality is a necessity, but equally humaneness is also a requisite criteria, while dealing with cases of this sort.

19. In the case on hand, the petitioner's husband had breathed his last on account of H.I.V., and the petitioner has also been the recipient of the deadly virus and has been taking treatment for the same. At that relevant point of time when the petitioner's husband passed away, the petitioner was also suffering from H.I.V., and her daughters were all minors at that point of time. It is not the stand of the respondents that the treatment taken by the petitioner had not precluded her appearance before the 3rd respondent. However, it should not be lost sight of that the petitioner is not a highly educated lady for understanding the nuances relating to employment, more especially compassionate appointment. She would have been under the illusion that submission of application for compassionate appointment would earn her a berth in a job, which in turn would alleviate her hardship and provide two square meals to the surviving members of her family, which would also have been guided by the fact that a scheme was in place for providing compassionate appointment. However, the petitioner would not have been aware of the intricacies in the appointment process, more so, when she was also a victim of H.I.V., and was suffering the traumatic experiences of having to live with the said ailment and looking at the doors of heaven with the life of her four children at peril. Therefore, putting the non-appearance against the petitioner to deny her appointment on compassionate ground, more especially, without any order of rejection having been passed by the 3rd respondent pertaining to the application submitted by the petitioner, would be against the benevolent scheme formulated by the Government for the purpose of safeguarding the family of the Government servant.

20. On a careful reading of the aforesaid decision, 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 out the sudden crisis that has befallen the family on the death of the sole breadwinner. In the present case, it is not only the loss of the sole breadwinner, which has gravely affected the family, but also the hanging of the Damocles sword over the head of the petitioner in the form of H.I.V., virus, which has also crucified her to the cross.



21. The Hon'ble Supreme Court in **Bhawani Prasad Sonkar Vs. Union of India & Ors., (2011 (4) SCC 209)**, observed as under:-

"15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

16. We do not propose to burden this judgment with reference to a long line of decisions of this Court on the point. However, in order to recapitulate the factors to be taken into consideration while examining the claim for appointment on compassionate ground, we may refer to a few decisions.

17. In *Umesh Kumar Nagpal v. State of Haryana* [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537], while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that:

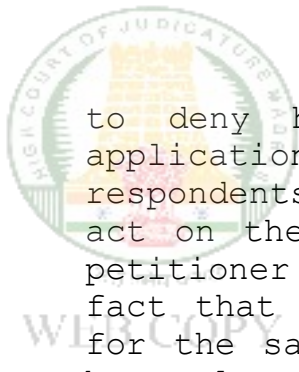
"2. ... The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes



III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

(Emphasis Supplied)

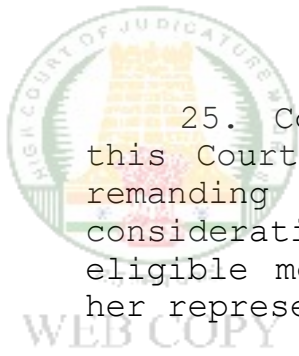
22. The intent and purpose for which the benevolent act is intended is to alleviate the poverty of the distressed family at the crucial hour and to provide it with financial stability. As held above, the exception to the rule made carved out in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned. In the case on hand, the husband of the petitioner died leaving behind the petitioner and his four minor daughters and that at the cruel hands of fate, hangs the life of the petitioner, who is also infected with H.I.V. The respondents ought to have considered the situation of the petitioner with the object and intent of providing compassionate appointment and, even if the respondents are to consider the case of the petitioner on the yardstick of legality, it is to be pointed out that the application of the petitioner is well within time, on which no orders were passed and the subsequent representation filed by the petitioner is only a continuity to the application filed by her, which was pending with the respondents and by no stretch of imagination, could it be stated to be a fresh application, which is beyond the cut-off period.. True it is that the act of the petitioner should fulfill the legalistic requirement and in the case on hand, the petitioner has fulfilled her obligation by filing the necessary application within the prescribed period of three years. Mere non-reporting before the 3rd respondent alone cannot be a ground



to deny her the compassionate appointment, more so, when the application filed by the petitioner was still alive with the respondents on the date when she filed her representation. Such an act on the petitioner, in the light of the trauma suffered by the petitioner due to the loss of her husband and also on account of the fact that she was also tested H.I.V. positive and taking treatment for the same, the calamitous situation in which the petitioner has been placed ought to have been appreciated by the respondents while subsequently rejecting her representation, which is a consequence of her application for compassionate appointment. When the respondents have not rejected her application for compassionate appointment and has taken a decision to reject her request for compassionate appointment only pursuant to her representation, it should be presumed that the representation submitted by the petitioner is only in continuity of her application and it cannot be treated to be in isolation, thereby, putting the said representation outside the ambit of the cut-off date for it to be rejected by the 3rd respondent.

23. If this Court, in the whole scheme of the facts, negates the relief sought for by the petitioner, interest of justice would be subserved only to show that the scales of justice are not balanced. It is trite that each and every case has to be decided on the facts and circumstances pertaining to the said case and the ratio laid down on the legal issue thereof, with regard to the principles to be followed, while exercise the inherent jurisdiction of this Court, should be on the careful analysis of the facts of the particular case and it should not be on the basis of a straight-jacket formula. In the case on hand, the facts as narrated above, pricks the conscience of this Court and in the fitness of things and interest of justice warrants that the petitioner should be provided with the relief of compassionate appointment, more so, when she has fulfilled in principle, all the requisites, as put forth by the Hon'ble Full Bench. The respondents ought to have appreciated the above and passed an affirmative order in favour of the petitioner, based on her representation and negation of the same, this Court is bound to redress the grievance of the petitioner by exercising its inherent jurisdiction by directing the respondents to consider the case of the petitioner for providing compassionate appointment to her elder daughter.

24. It would not be out of context here for this Court to mention that the main breadwinner having passed away and that his wife, the next in line is also infected with the deadly H.I.V. virus, it can safely be said that the family is passing through a distressed and calamitous period and, therefore, for all purposes, the family is ensconced under the protective umbrella of compassionate appointment to be provided to one of the members of the family, as per the scheme formulated by the respondents, and if the same is not provided, it would cause very great prejudice and hardship to the family.



25. Considering the facts and circumstances as stated above, this Court is of the considered view that this is a fit case for remanding the matter back to the respondents for fresh affirmative consideration for providing compassionate appointment to one of the eligible members of the family, as sought for by the petitioner in her representation.

26. Accordingly, the writ petition is allowed and the impugned order passed by the 3rd respondent is set aside and the matter is remanded back to the third respondent for fresh consideration and the respondents are directed to consider the petitioner's request for compassionate appointment to her elder daughter, and pass appropriate orders, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS-)

To

1. The Secretary to Government,
Civil Supplies and Consumer Protection Department,
Government of Tamilnadu,
Secretariat,
Chennai-9.

2. The Managing Director,
Tamilnadu Civil Supplies Corporation Ltd.,
12, Thambusamy Salai,
Kilpauk,
Chennai-10.

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-1641[F] dated 21/01/2021)
+1 CC to Mr.V.KANNAN, Advocate (SR-1547[F] dated 21/01/2021)

NS

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