



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.1176 of 2017

M.Kannan

... Petitioner

Vs.

The Oriental Insurance Company Limited,
Rep by its Chief Regional Manager,
Third Floor, Cheran Towers,
78, Govt Arts College Road,
Coimbatore-641 018.

... Respondent

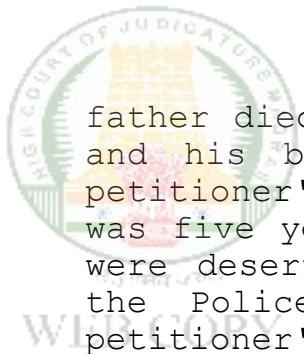
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the scheme for compassionate appointment in Public Sector General Insurance Companies, in so far its prospective application from 1st November 2014 and the consequential impugned order dated 29.07.2016 on the file of the respondent as illegal and consequently for a direction directing the respondent to provide compassionate appointment to the petitioner in any suitable post within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy
For Respondent : Mr.K.Bhaskaran
Standing Counsel

O R D E R

This Writ Petition is filed by the petitioner, to declare the scheme for compassionate appointment in Public Sector General Insurance Companies, in so far its prospective application from 1st November 2014 and the consequential impugned order dated 29.07.2016 on the file of the respondent as illegal and consequently, for a direction directing the respondent to provide compassionate appointment to the petitioner in any suitable post within the time stipulated by this Court.

2.The case of the petitioner is that, the petitioner's father viz., M.Mahendran, was working as a Development Officer in the respondent Insurance Company at Simmakal Branch, Madurai,. The petitioner's father belongs to Scheduled Caste Community and his mother belongs to Most Backward Class Community. The petitioner's



father died on 14.03.2004 in harness, leaving behind the petitioner and his brother as legal heirs. At the time of death of the petitioner's father, the petitioner was 10 years old and his brother was five years old and after the death of his father, both of them were deserted by his mother also. Furthermore, on investigation, the Police Officials have filed a criminal case against the petitioner's family members and his mother for his father's suspicious death and thereby, the petitioner was in care and custody of the paternal guardian and he was not able to make an application in time. The petitioner, after completion of his graduation and on attaining majority, has made an application on 25.07.2016 and the same was rejected on 29.07.2016 on the ground that the Company's Compassionate Appointment Scheme is applicable only for the deaths after 1st November 2014 and at that time, there is no scheme for compassionate appointment. Challenging the said scheme, the present writ petition is filed.

3.The learned counsel appearing for the petitioner submitted that though the petitioner's father died in the year 2004, at that time the petitioner and his brother were minors, they were not able to make an application in time. Further, there is no scheme available at the relevant point of time and after coming to know that the said scheme was again reenforced for providing compassionate appointment, the petitioner has made an application for appointment on compassionate ground. The petitioner's father was the sole bread winner of his family and after the death of his father, the petitioner's family faced financial crisis. Without considering the indigent circumstances of the petitioner, the respondent has mechanically rejected the petitioner's application, which is an unsustainable one. Further, the learned counsel for the petitioner submitted that at the time of death of the petitioner's father, there is no appointment on compassionate ground, but however, the petitioner's family is entitled for monetary compensation and even that compensation was not provided to the petitioner. Hence, he prays for the aforesaid relief in the present writ petition.

4.Per contra, the learned Standing Counsel appearing for the respondent submitted that as per Circular, dated 17.07.2002, there was a scheme for the payment of Monetary Compensation instead of Compassionate Ground Appointment for deaths which might have taken place on or after 01.06.2002 and therefore, no compassionate ground appointment for deaths occurring on or after 01.06.2002. Therefore, the petitioner is entitled only for monetary compensation. Further, on attaining majority, the petitioner has made an application in the year 2016 for compassionate appointment and at that time, there is no Scheme for compassionate appointment. However, the petitioner has made an application only for compassionate appointment and not for claiming monetary compensation. In the absence of any application, the respondent has not provided any monetary compensation to the petitioner. Hence, he prays for dismissal of this writ petition.



5. In support of his contention, the learned Standing Counsel for the respondent relied upon the decision of the Division Bench of this Court in ***W.A.No.2929 of 2019, dated 04.09.2019*** and also the order of this Court in ***W.P(MD).No.7016 of 2011, dated 07.12.2020***.

WEB COPY

6. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent and perused the materials available on record.

7. Considering the facts and circumstances of the case, the facts in the present case are not in dispute. Admittedly, at the time of death of the petitioner's father, the petitioner and his brother were minors and both of them were deserted by their mother and hence, they are under the care and custody of the paternal guardian. It is also admitted that the petitioner had made an application beyond the limited period. Further, at the relevant point of time, there is no Scheme for compassionate appointment. The petitioner, on attaining majority, has made an application for compassionate appointment in the year 2016. However, between 2002 and 2014, there is no Scheme for providing compassionate appointment. In the present case, the petitioner is entitled to get the monetary compensation as per the Circular dated 17.07.2002, which is extracted hereunder:

**"THE ORIENTAL INSURANCE COMPANY LIMITED
HEAD OFFICE: ORIENTAL HOUSE, A-25/27, ASAF ALI ROAD,
NEW DELHI-110002**

Dept. Personnel Date 17 July 2002
Ref.Pers/HO/COMP.G.APTT./2002/CR-5378

CIRCULAR

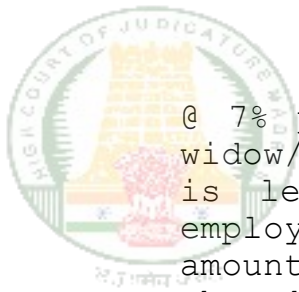
TO ALL ROS & OSTC FARIDABAD

Re: Scheme for grant of "Monetary Compensation"
in lieu of Compassionate Ground Appointments to
the legal heir of the deceased employee.

Reference is taken to the existing guidelines regarding Compassionate Ground Appointment in services of the Company to the legal heir of the deceased employee who fulfil the required eligibility conditions.

The matter has been reviewed and it has been decided by the Company to introduce a scheme for the payment of Monetary Compensation (Lump-sum amount) to the legal heir of our deceased employee instead of Compassionate Ground Appointment for deaths which might have taken place on or after 01.06.2002. There shall be no Compassionate Ground Appointment for deaths occurring on or after 01.06.2002.

In terms of this scheme if the total of monthly pension, monthly interest on terminal benefits such as PF, Commutation of Pension, Gratuity, Leave Encasement, GSLI and MBS etc (interest calculated on Notional basis



@ 7% p.a) and the total regular monthly income of the widow/widower and their dependents from their employment is less than 70% of the Basic DA of the deceased employee's last drawn salary, the difference in the amount will be calculated from the date of death till the date of superannuation and the gross amount so calculated, subject to a minimum of Rs.1 lac and maximum of Rs.3 lacs., will be given to the legal heir of the deceased employee subject to tax deduction as per Income Tax Rules.

The Competent Authority for grant of Monetary Compensation shall be CMD.

Individual cases for considering grant of Monetary Compensation should be referred to HO., on new formats which will be sent shortly, giving complete details about the deceased employee, his/her last drawn Basic and DA and the details of monthly pension, monthly interest on terminal benefits such as PF, Commutation of Pension, Leave Encashment, GSLI and MBS etc (interest calculated on Notional basis @ 7% p.a) and the total regular monthly income of the widow/widower and their dependents from their employment.

In respect of the cases where pension, monthly interest on terminal dues and income from employment of the widow/widower and their dependants is more than 70% of last drawn Basic of DA of the deceased employee neither the compensation nor the Compassionate Ground Appointment shall be allowed to the legal heir.

Please bring these guidelines to the notice of all concerned and arrange to display a copy of the Circular on the Company's Notice Board.

(B.K.SARKAR)
ASSTT.GENL.MANAGER"

8.The petitioner had already given representation for compassionate appointment, which has been rejected by the respondent at the relevant point of time. However, in the present scenario, the circular, dated 17.07.2002 provides for compensation for the persons, who cannot be provided with compassionate appointment in the absence of scheme. Such being the case, the stand of the respondent that there is no application, on the basis of which, the compensation cannot be given to the petitioner is not sustainable, as the respondent already entertained the petitioner's representation for compassionate appointment, as representation for the purpose of granting compensation. Even otherwise, if the respondent is not inclined to take this representation as for monetary compensation, this Court in exercise of its inherent power under Article 226 of the Constitution of India, treat the earlier representation itself as a representation for the purpose of grant of monetary compensation, as per Circular. Accordingly, the respondent is directed to treat earlier representation as one for



seeking monetary compensation. Accordingly, the respondent is directed to consider the writ petitioner's earlier representation dated 25.07.2016 for the purpose of monetary compensation and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the above observations, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

The Oriental Insurance Company Limited,
Rep by its Chief Regional Manager,
Third Floor, Cheran Towers,
78, Govt Arts College Road,
Coimbatore-641 018.

+1 CC to Mr.K.BHASKARAN, Advocate (SR-5062[F] dated 15/02/2021)

+1 CC to Mr.T.LAJAPATHI ROY, Advocate (SR-5273[F] dated 16/02/2021)

Order made in
W.P. (MD)No.1176 of 2017
15.02.2021

VR (CO)

SRS (04/03/2021) 5P : 4C