



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.17641 of 2017

WEB COPY

T.Prasath

... Petitioner

Vs.

1.The Secretary to Government,
Social Welfare & Nutritious Meal Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Directorate of Social Welfare,
Nakireddy Thottam,
SIDCO Old Building,
Thiru.Vi.Ka.Industrial Area,
Guindy, Chennai-600 032.

3.The District Collector,
Kanyakumari District,
Nagercoil.

4.The Commissioner,
Kurunthancode Panchayat Union,
Kurunthancode,
Kanyakumari District.

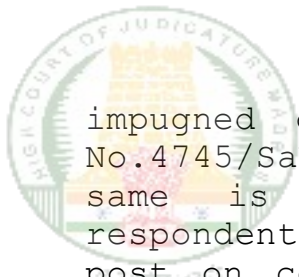
... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records and quash the impugned order issued by the first respondent in his Letter No.4745/SaNa.4-2/2017-5, dated 27.06.2017, on the ground that the same is arbitrary, illegal and consequently, direct the respondents to appoint the petitioner in any one of the suitable post on compassionate ground within a time frame to be stipulated by this Court.

For Petitioner	:	Mr.G.Ramanathan
For Respondents	:	Mr.D.Muruganantham
		Additional Government Pleader
		for R.1 to R.3
	:	No Appearance for R.4

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the



impugned order issued by the first respondent in his Letter No.4745/SaNa.4-2/2017-5, dated 27.06.2017, on the ground that the same is arbitrary, illegal and consequently, direct the respondents to appoint the petitioner in any one of the suitable post on compassionate ground within a time to be stipulated by this Court.

2. The case of the petitioner is that the petitioner's father was working as a Noon Meal Organizer at Government Middle School in Kurunthancode Panchayat Union, Kanyakumari District and he died while he was in service, on 14.08.2005, leaving behind the petitioner, his mother and his sister, as legal heirs. At the time of the death of petitioner's father, the petitioner and his sister were minors. In the year 2007, the petitioner's mother sent an application seeking compassionate appointment to the petitioner. The third respondent sent a reply, dated 26.04.2007, by directing the petitioner's mother to send another application, after attaining the majority of the petitioner, through the fourth respondent. Immediately after attaining the majority, the petitioner sent an application on 09.07.2012 to the third respondent through the third respondent seeking an appointment on compassionate ground. Further, on 19.08.2014, the third respondent sent a letter to the petitioner to produce all the relevant documents. As the direction of the third respondent, the petitioner has submitted all the necessary documents on 01.09.2014. Thereafter, the said application was forwarded to the second respondent on 04.02.2015. Even thereafter, no order was passed. Hence, the petitioner has filed a writ petition in W.P. (MD)No.17120 of 2016 and this Court, vide order dated 09.09.2016, has issued a direction to the first respondent therein to consider the representation of the petitioner in the light of G.O.Ms.No.198, dated 25.10.2007 and in the light of the order of this Court, dated 11.03.2015, made in W.P.No.24005 of 2014. Thereafter, the said representation made by the petitioner was rejected on the ground that when female member is available for the post of Noon Meal Organizer, a male member cannot be appointed as Noon Meal Organizer. It is also submitted that the petitioner's sister has got MBA graduation. Challenging the order of rejection, the present writ petition is filed by the petitioner.

3. Learned Counsel appearing for the petitioner would submit that though the petitioner's father died in the year 2005, within a period of three years from the date of death of his father, an application was made by the petitioner's mother seeking compassionate appointment and since it was informed that after attaining the majority of the petitioner, an application could be sent through the fourth respondent, immediately after attaining majority, the petitioner made an application seeking compassionate



ground appointment. However, the said application was rejected on the ground that when the female family member is available for the post of Noon Meal Organizer, male member cannot be appointed as Noon Meal Organizer on compassionate ground.

4. Learned Counsel for the petitioner would further submit that a very same issue came up for consideration in W.P.No.24005 of 2014 and this Court, vide order dated 11.03.2015 directed the first respondent therein to provide compassionate appointment to the male member of the family by relaxing the condition. Therefore, the learned Counsel would pray that applying the said ratio, this Court may issue a direction to the second respondent to relax the rules and provide compassionate appointment to the petitioner.

5. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the State Government has taken a policy decision vide G.O.Ms.No.163, Social Welfare and Nutritious Meals Programme Department, dated 18.08.2010 and G.O.Ms.No.198, Social Welfare and Nutritious Meals Department, dated 25.10.2013, only female employees could be posted and they alone are equipped to work as Noon Meal organizer in the female dominated programme. The Noon Meal Programme is fully funded by the Central Government and the State Government and only a female employee alone can take care of the school children for providing nutritious meal, for which, the petitioner cannot be accommodated. Further, in the present case, the petitioner's sister is very much available. Instead of seeking compassionate appointment for the petitioner's sister being a female family member, the petitioner has sent the application seeking compassionate appointment as Noon Meal Organizer. Hence, the learned Additional Government Pleader prays for dismissal of the writ petition.

6. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3 and perused the materials placed on record.

7. The facts in the present case are in dispute. Admittedly, the petitioner's father died in the year 2005, while he was working as a Noon Meal Organizer. At that time, the petitioner's mother sent an application seeking compassionate appointment to the petitioner. At that time, the petitioner was a minor and hence, that application was not processed. Thereafter, after attaining majority, the petitioner made an application on 09.07.2012. It is also not in dispute that the petitioner was minor at the relevant point of time and further, against the rejection of the application made by the petitioner's mother, no challenge has been made. The petitioner's mother was also



directed to renew the application, immediately after attaining the majority of the petitioner.

8. Be that as it may. 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?"

9. 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 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).

10. 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.

11. 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.

12. 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."

13. 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.



14. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the families of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

15. 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. The reason for compassionate appointment, as envisaged under the scheme, and the relevant Government Orders, is the need of immediate necessity to avert the financial hardship that would be sustained by the bereaved family on the death of its breadwinner which is sought to be alleviated by providing immediate appointment.

16. 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 to establish the existence of indigence even after attaining the age of majority. 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.

17. 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. The Government has also taken a policy decision to provide employment in the Noon Meal Programme only for female and the male member cannot be provided with an employment in Noon Meal Programme. The female member viz., the petitioner's sister is very much available seeking compassionate appointment as Noon Meal Organizer. However, the petitioner, being a male member, made the application seeking compassionate appointment as Noon Meal Organizer. Hence, the first respondent has considered all the relevant facts and circumstances and also the relevant Government Orders, which are in existence relating the Noon Meal



Programme, has rightly rejected the application made by the petitioner.

18. 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.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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 Secretary to Government,
Social Welfare & Nutritious Meal Department,
Fort St.George, Chennai-600 009.

2.The Commissioner,
Directorate of Social Welfare,
Nakireddy Thottam,
SIDCO Old Building,
Thiru.Vi.Ka.Industrial Area,
Guindy, Chennai-600 032.

3.The District Collector,
Kanyakumari District, Nagercoil.

+1 CC to Mr.G.RAMANATHAN, Advocate (SR-1808[F] dated 22/01/2021)

+1 CC to SGP (SR-1631[F] dated 21/01/2021)

W.P(MD)No.17641 of 2017
20.01.2021

KM (04.02.2021) 7P 6C