



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WEB COPY

Writ Petition (MD)No.23449 of 2017

and

W.M.P. (MD) .No.19711 of 2017

S.Saravanan

... Petitioner

Vs.

1.The Director of School Education,
DPI Complex, College Road,
Nungambakkam,
Chennai-6.

2.The District Educational Officer,
Tuticorin,
Tuticorin District.

3.The District Elementary Education Officer,
Tuticorin,
Tuticorin District.

4.The Assistant Elementary Education Officer,
Alwar Thirunagari,
Thenthirugorai,
Tuticorin District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in Na.Ka.No.87572/J3/2012, dated 12.04.2012 passed by the first respondent and quash the same and consequently direct the respondents to consider the petitioner's representation dated 27.03.2017 on the basis to give employment on the compassionate ground according to the education qualification of the petitioner within the time limit stipulated by this Court.

For Petitioner

: Mr.PR.Boomee Rajan

For Respondents

: Mr.C.M.Marichelliah Prabhu
Additional Government Pleader

O R D E R

This writ petition has been filed challenging the impugned order passed by the first respondent in Na.Ka.No.87572/J3/2012, dated 12.04.2012 and quash the same and consequently direct the respondents to consider the petitioner's representation dated



27.03.2017.

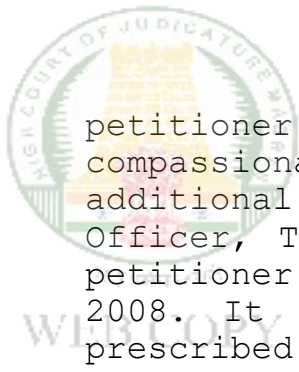
2. The case of the petitioner is that his father worked as a Teacher in Therkankulam Village Panchayat Board Primary School, Therkankulam, Tuticorin District and died in harness on 16.09.1989, leaving behind the petitioner, petitioner's mother, two sisters and six brothers. Thereafter, his mother was also died. Hence, the petitioner's elder brother made a representation to the fourth respondent seeking employment on compassionate ground. However, the same was not considered and no order was passed. Therefore, the petitioner has made an application on 06.10.2008, to the fourth respondent for compassionate appointment. But the same was rejected on 12.04.2012, on the ground that the application was made after the period of three years from the date of death of the petitioner's father. Thereafter, the petitioner made a representation on 27.03.2017, citing the decision of this Court reported in **2012(1) CWC 469**. However, till date the same was not considered. Challenging the rejection order as well as to consider the petitioner's representation, dated 27.03.2017, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that at the time of death of the petitioners' father, he is a minor and after attaining majority, he filed an application for compassionate appointment. However, without considering the financial position of the petitioner's family, the said application was rejected, on the ground delay. He would further submit that there is no delay on the part of the petitioner and hence, he prays for allowing this writ petition.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that initially the petitioner's brother made an application seeking compassionate appointment in the year 1992 and he has not submitted the additional details required by the District Elementary Educational Officer, Tuticorin. Thereafter, the petitioner made an application to the fourth respondent in the year 2008, after he attaining majority. He would further submit that as per the Government Letter No.38454/Personnel 9(1) 2007-1, dated 27.12.2007, there is no provision for providing appointment on compassionate ground to alternative legal heir. The Scheme provides only to tide over the financial crisis faced by the deceased family and hence, he prays for dismissal.

5. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. In the case on hand, it is not in dispute that the petitioner's father passed away in the year 1989 and the



petitioner's brother made an application in the year 1992 seeking compassionate appointment. However, he has not submitted the additional details required by the District Elementary Educational Officer, Tuticorin. Thereafter, after lapse of nineteen years, the petitioner made an application seeking employment to him in the year 2008. It is evident that the petitioner had applied beyond the prescribed period of three years.

7. Further, 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.

8. This 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 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 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?"

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 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.

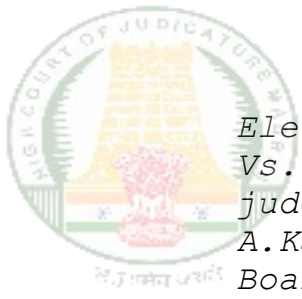
16. From the above the main ingredient for considering a case for compassionate appointment is that it is only for the purpose of meeting the sudden crisis that has occurred due to the untimely death of the breadwinner. It is not that in all cases where the breadwinner breathes his last in harness, compassionate 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."

9. 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.

10. 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.

11. 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.

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

13. 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. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

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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

1.The Director of School Education,
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Alwar Thirunagari,
Thenthirugorai,
Tuticorin District.

+1 CC to M/s.GP (SR-1836[F] dated 22/01/2021)

+1 CC to M/s.PR.BOOMEERAJAN, Advocate (SR-1813[F] dated 22/01/2021)

Writ Petition (MD)No.23449 of 2017

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ES (CO)

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