



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WEB COPY

Writ Petition (MD)No.23785 of 2017

K.Shanmugasundaram

... Petitioner

Vs.

1.The Secretary,
Department of Milk and Dairy Development,
Secretariat,
St. George Fort,
Chennai.

2.The General Manager,
Aavin,
Sathamangalam,
Madurai 625 020.

... 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 relating to the impugned order passed by the second respondent in Letter No.Na.Ka.No.3707/பணிக்குழு-2/2017, dated 01.08.2017 and quash the same as arbitrary and illegal and consequently direct the respondents to give employment on compassionate grounds to the petitioner.

For Petitioner	:	Ms.R.Murugeswari
For R1	:	Mr.D.Muruganantham Additional Government Pleader
For R2	:	Mr.E.Marees Kumar Standing counsel

O R D E R

This writ petition has been filed challenging the impugned order passed by the second respondent in Letter No.Na.Ka.No.3707/பணிக்குழு2/2017, dated 01.08.2017 and to quash the same and consequently direct the respondents to give employment to the petitioner on compassionate ground.

2. The case of the petitioner is that his father was served as a Driver in the second respondent Office and died in harness on 09.10.2000, leaving behind the petitioner, wife, daughter, father and mother as legal heirs. Therefore, the petitioner's mother made



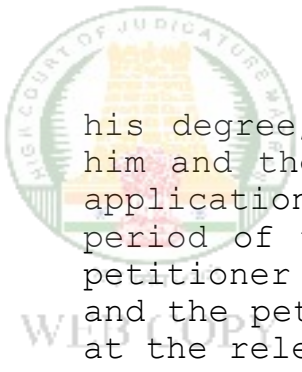
an application for compassionate appointment to the second respondent on 11.01.2001. However, the second respondent has rejected the same. Thereafter, the petitioner has made an application on 27.06.2017, seeking compassionate appointment to him along with all the relevant documents, after completing his graduation. But the said application was rejected by the second respondent on 01.08.2017, on the ground that the application was made after the period of three years from the date of death of the petitioner's father. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the order impugned in this writ petition is *per se* illegal on the ground that the petitioner's mother has submitted the application immediately after the death of the petitioner's father i.e., on 11.01.2001. However, the said application was rejected and in pursuance of the earlier application, the petitioner has made the application on 27.06.2017, for compassionate appointment. He would further submit that at the time of death of the petitioners' father, he is a minor and without considering the financial position of the petitioner's family, the said application was rejected and the petitioner's mother also passed away on 20.12.2020. Hence, he prays for allowing this writ petition.

4. Per contra, the learned Additional Government Pleader appearing for the first respondent would submit that initially the petitioner's mother has submitted the application in the year 2001 for compassionate appointment, but she has not produced the particulars. Thereafter, the petitioner has submitted the application only on 27.06.2017, nearly 17 years after the death of the petitioner's father. He would further submit that as per the G.O.(Ms.)No.120, Labour and Employment Department, dated 26.06.1995, the application for compassionate appointment should be made within three years from the date of death of the Government Servant. Hence, the second respondent has rejected the petitioner's application for compassionate appointment on the ground of delay and he prays for dismissal.

5. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the first respondent, the learned Standing counsel for the second respondent 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 2000 and initially the petitioner's mother has submitted the application for compassionate appointment in the year 2001. However, she has not submitted the particulars required by the second respondent. Hence, the second respondent has rejected the same. At the time of death of the petitioner's father, the petitioner is a minor and after completing



his degree, he has submitted the application seeking employment to him and the said application was rejected. As per the Scheme, the application for compassionate appointment has to be made within a period of three years. In the present case, it is evident that the petitioner had applied beyond the prescribed period of three years and the petitioner's mother also not pursued the earlier application at the relevant point of time.

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.

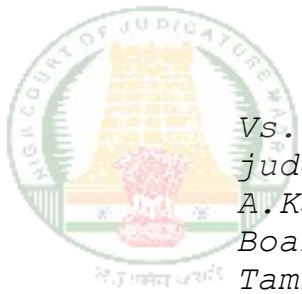
16. From the above the main ingredient for considering a case for compassionate appointment is that it is only for the purpose of meeting the sudden crisis that has occurred due to the untimely death of the breadwinner. It is not that in all cases where the breadwinner breathes his last in harness, compassionate 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 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 second respondent as no case

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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 (AE)

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/ /2021

Sub Assistant Registrar(CS)

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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Department of Milk and Dairy Development,
Secretariat,
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Chennai.

2.The General Manager,
Aavin,
Sathamangalam,
Madurai 625 020.

+1 CC to Ms.R.Murugeshwari, Advocate (SR-1214[F] dated 11/12/2021)

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(DKS)

KV(25.02.2021) 6P 4C