



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.27973 of 2021

N.Manivel

.. Petitioner

Vs.

1. The Principal District Judge  
Dharmapuri District  
Dharmapuri.

2. The District Munsif cum Judicial Magistrate  
Pennagaram  
Dharmapuri District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records pertaining to the order made in endorsement in ROC No.6498/2021 dated 17.11.2021 of the 1st respondent and quash the same and consequently direct the 1st respondent to issue compassionate appointment to the petitioner.

For the Petitioner : Mr.A.E.Ravi Chandran

For the Respondents : Mr. Haja Mohideen Gisthi  
for Respondents 1 and 2

ORDER

(Order of the Court was made by  
the Hon'ble Chief Justice)

The writ petition has been filed challenging the order dated 17.11.2021, by which, the application of the petitioner seeking compassionate appointment was rejected.



WEB COPY

2. Learned counsel for the petitioner submits that compassionate appointment was sought on the death of the petitioner's mother on 07.06.2008. The petitioner, being a minor at that time, as he was born on 15.04.2001, could not apply for compassionate appointment. However, prior to attaining the age of majority, an application for compassionate appointment was made by the petitioner's grandmother on 20.01.2011. The said application was not accepted on the ground that the petitioner is a minor. Thereafter, the petitioner made an application on 05.07.2019 on attaining majority. The said application was rejected by the impugned order on the ground of limitation of three years for maintaining the application from the date of the death of Government servant.

3. Learned counsel for the petitioner submits that the impugned order has been passed ignoring that the application given in the year 2011 was not accepted on the ground that the petitioner was minor and the said fact has also been recorded in the impugned order. Therefore, the application was submitted by the petitioner immediately on attaining the age of majority. The rejection of the aforesaid application is per se illegal and it is in ignorance of the Government Order dated 10.12.2014.

4. According to learned counsel for the petitioner, as per G.O.Ms.No.155 dated 10.12.2014, an applicant is entitled to submit an application for compassionate appointment on attaining the age of 18 years. Thus, the application submitted by the petitioner could not have been rejected on the ground of delay as it has been made beyond the period of three years from the date of death of the petitioner's mother. In fact, pursuant to the G.O. dated 10.12.2014 amending the provisions, the petitioner was entitled to make an application for compassionate appointment on attaining the age of 18 years.

5. In the light of the aforesaid, a challenge to the order has been made in reference to the G.O. dated 10.12.2014 and the judgment of the Division Bench of this Court in the case of M.Vijayakumar v. The Director of School Education [judgment dated 12.03.2021 in W.A.(MD) No.1478 of 2017], wherein, after analysing the issue on similar set of facts, a direction was given to consider the application, by extending the benefit of the scheme for compassionate appointment de hors the stipulated period of three years.

6. Learned counsel for the petitioner, referring to the judgment of the Apex Court in the case of Secretary to Government, Department of Education (Primary) and Others v. Bheemesh Alias Bheemappa [2021 SCC OnLine SC 1264], submits that the prayer made in the writ petition may be allowed in the light of paragraph 19 of the said judgment.



7. The writ petition has been contested by learned counsel for the respondents.

8. Learned counsel for the respondents submits that the application for compassionate appointment was submitted by the petitioner on 05.07.2019, though his mother died on 07.06.2008. It has been rejected as the application was submitted beyond the stipulated period of three years. The earlier application submitted by the petitioner's grandmother on 20.01.2011 could not be considered since the petitioner was minor at that time.

9. A period of three years has been stipulated in the G.O. for making an application for compassionate appointment. The Apex Court, in catena of judgments, has held that scheme of compassionate appointment is to extend immediate relief to the family whose bread earner has died in harness and thus, application has to be given within the reasonable time for the purpose of the object sought to be achieved.

10. The object of providing compassionate appointment gets frustrated if it is sought after the lapse of reasonable period. The said issue has been analysed by the Apex Court in the case of Umesh Kumar Nagpal v. State of Haryana and Others [(1994) 4 SCC 138] and held that the compassionate employment cannot be sought after a lapse of reasonable period.

11. The issue as to whether an application would be maintainable beyond the period given under the Rules has been decided by a Division Bench of this Court in Senior Divisional Manager, LIC of India v. A.Rameesraja by judgment dated 18.12.2019 in W.A.(MD) No.94 of 2015, wherein, relying on judgment of the Apex Court in the case of Sanjay Kumar v. State of Bihar and Others [(2000) 7 SCC 192], dismissed the writ appeal.

12. Explaining the G.O. dated 10.12.2014, it is submitted that it permits an application for compassionate appointment on attaining the age of majority, but it does not provide for making such application beyond the period of three years. There is no corresponding amendment in the G.O. in regard to the period for making such application beyond three years. Thus, the G.O. dated 10.12.2014 cannot be interpreted taking one part of it leaving the other.

13. It is no doubt true that the application for compassionate appointment can be given only on attaining the age of 18 years. But, such an application would not be maintainable or acceptable if it is submitted beyond the period of three years of the death of the erstwhile Government servants. In a case where the dependant was of 16 years at the time of death of



३.५ प्रत्येक अर्थी



therein was decided referring to the scheme applicable to LIC.

19. According to learned counsel for the petitioner, at the time of the death of the petitioner's mother, no period was provided under the G.O. and accordingly, if there was amendment in the scheme, consideration of the application should have been made with reference to the date of the death of the mother, i.e. 07.06.2008 and that the petitioner cannot be governed by the subsequent G.O. In support of the arguments, a reference was made to the judgment of the Apex Court in the case of Secretary to the Government Department of Education supra. Paragraph 19 of the said judgment is quoted as under:

"19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of the consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results,



WEB COPY

depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the case tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor."

20. The issue raised by the petitioner is in reference to the G.O. dated 10.12.2014 which permits an application to be made for compassionate appointment on attaining the age of majority. The G.O. referred to above, no doubt, permits an application for compassionate appointment by a dependant on attaining the age of majority. But, no amendment in the G.O. extending the period for submission of an application for compassionate appointment for the minor, has been made. The period of three years was existing even at the time of the death of petitioner's mother.

21. If the provisions of G.O. are read together, it may be taken that within the period of three years of death, if one attains the age of majority, he would be entitled to make an application, as he would not be entitled to make an application before attaining the age of majority. The aforesaid interpretation is to be taken while referring to the object sought to be achieved in framing the scheme for compassionate appointment.

22. It is well settled that compassionate appointment is given when the bread winner of the family dies in harness. It is for the immediate relief to the family to meet the financial crisis and it cannot be when a family could survive for years together. Otherwise, any compassionate appointment after a lapse of several years would be taken to be nothing but opposed to the scheme and the Apex Court has not approved the same. Rather, in the case of Umesh Kumar Nagpal supra, the appointment on compassionate basis was held to be violative of Articles 14 and 16 of the Constitution of India, as a qualified and meritorious person does not get appointment as against the post filled by compassionate appointment. Though the aforesaid observation was not carried, but it shows that the compassionate appointment is for a purpose and cannot be taken as a mode of appointment.

23. In the light of the aforesaid, G.O. dated 10.12.2014 cannot provide any relief to the petitioner, unless it is



WEB COPY

amended by extending the period of submission of application. It may be a hard case for the petitioner, but when a ratio is to be propounded by this Court, it should not be driven by a particular case for the reason that the ratio propounded by the Court is applied in rem.

24. In similar circumstances where the employee died in harness leaving behind the minors and application was made for compassionate appointment after the minor attained the age of majority, the Supreme Court has consistently held that the Courts can neither extend the time nor meddle with the scheme of compassionate appointment and make it another means of recruitment.

25. In Jagdish Prasad v. State of Bihar [(1996) 1 SCC 301], the Supreme Court, in Paragraph No.3, held as follows:-

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules".

26. In Haryana State Electricity Board v. Naresh Tanwar [(1996) 8 SCC 23], the Supreme Court, in Paragraph No.9, has held as under:

"9. It has been indicated in the decision of Umesh Kumar Nagpal [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the



WEB COPY

deceased employee. In the other decision of this Court in Jagdish Prasad case [(1996) 1 SCC 301 : 1996 SCC (L&S) 303 : (1996) 32 ATC 238] , it has been also indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

(emphasis supplied)"

27. In Sanjay Kumar v. State of Bihar [(2000) 7 SCC 192], it has held as under:

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar [(1998) 5 SCC 192 : 1998 SCC (L&S) 1302 : (1998) 2 Pat LJR 181]. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

(emphasis supplied)"

28. Further, in the decision of State of Manipur v. Mohd. Rajaodin [(2003) 7 SCC 511], the Supreme Court has held as hereunder:-

"11. In Sushma Gosain v. Union of India [(1989) 4 SCC 468 : 1989 SCC (L&S) 662 : (1989) 11 ATC 878] it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided



WEB COPY

immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati v. Union of India* [1991 Supp (2) SCC 689 : 1992 SCC (L&S) 135 : (1991) 17 ATC 937] and *Union of India v. Bhagwan Singh* [(1995) 6 SCC 476 : 1996 SCC (L&S) 33 : (1995) 31 ATC 736] . In *Director of Education (Secondary) v. Pushpendra Kumar* [(1998) 5 SCC 192 : 1998 SCC (L&S) 1302] it was observed that in the matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

(emphasis supplied)"

29. Therefore, the law on the subject having been categorically laid down by the Supreme Court, we cannot be driven by sympathetic considerations in this matter.

30. In view of the above, we are unable to accept the argument made by learned counsel for the petitioner. It is even in reference to the judgment of the Division Bench in the case of *M.Vijayakumar supra*, as the earlier judgment of this Court in the case of *Senior Divisional Manager, LIC of India supra* was not taken note of and the view expressed in the case of *M.Vijayakumar* is not in consonance with the earlier view. Thus,



the judgment of the Division Bench in the case of M.Vijayakumar supra is to be treated per incuriam limited to the subject matter and therefore, cannot be applied to the case. Rather, to maintain judicial discipline, this Court is bound by the earlier judgment of the Division Bench on the same issue in the case of Senior Divisional Manager, LIC of India supra. It is otherwise supported by the judgments of the Apex Court referred to above.

31. As regards the judgment of the Apex Court in the case of Secretary to Government, Department of Education, the same would not have an application to the facts of this case. In paragraph 19 of the said judgment, the Apex Court has taken note of the conflicting situation, namely, one - the date of the death of the employee and another - the date of consideration of the application of the dependant. It was held that one date, i.e. the date of the death is not changed. Whereas, the date of consideration of the application may remain changeable on case to case basis. An illustration has also been given in regard to the different date of consideration vis-a-vis the amendment in the scheme for its application. It was in a case where two employees die on the same date and the application was submitted thereupon on different dates and in between, if there is an amendment, the consideration of the application subsequent to the amendment in the scheme would take a different result than the application considered before the amended date.

32. Thus, it may be seen that above judgment is an authority for the proposition that as between the date of consideration and the date of death of the employee, the rules which were prevalent as on the date of death should be applied for deciding the entitlement of the applicant. In this case, the present scheme of compassionate appointment was originally introduced by the Government in the Government Order in G.O. (M.S).No.225, Labour Department dated 15.02.1972. By G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, the three years period was introduced.

33. The first clause rule in G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, is as follows:-

"1) The application for appointment of compassionate grounds should be made within three years of the date of death of the government servant."

Therefore, the period of three years was there even as on the date of death of the petitioner's mother i.e., 07.06.2008 and also on the date of consideration of the application. Therefore, reliance on the law laid down by the Supreme Court in paragraph No.19 of the above judgment does not further the case of the petitioner in any manner.



34. The argument has otherwise been raised in conflict with the petitioner's own argument when he has referred to G.O. dated 10.12.2014 for its application on the case despite being issued much subsequent to the death of the petitioner's mother and otherwise, the period to make an application was existing even on the date of the death of the petitioner's mother. Assuming it was not there, even then the subsequent G.O. becomes applicable, as otherwise, for the purpose of the object sought to be achieved for providing compassionate appointment.

35. For the reasons given above, the writ petition fails and is accordingly dismissed. There will be no order as to costs.

Sd/-  
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kpl/drm/klt

To:

1. The Principal District Judge  
Dharmapuri District, Dharmapuri.
2. The District Munsif cum Judicial Magistrate  
Pennagaram, Dharmapuri District.

+1cc to Mr.A.E.Ravichandran, Advocate, S.R.No.12587

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No.12516

W.P.No.27973 of 2021

PM(CO)  
SU(09/03/2022)