



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 23.02.2022**

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**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) No.5076 of 2020

J.Suseela

... Petitioner

-vs-

1. The Chairman cum Managing Director,  
Tamil Nadu Generation Electricity  
Distribution Corporation Ltd.,  
144, Annasalai,  
Chennai-600 002.

2. The Chief Engineer Personnel,  
Tamil Nadu Generation Electricity  
Distribution Corporation Ltd.,  
144, Annasalai,  
Chennai-600 002.

3. The Superintending Engineer,  
Tamil Nadu Generation Electricity  
Distribution Corporation Ltd.,  
Dindigul Electricity Distribution Circle,  
Dindigul.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the 3<sup>rd</sup> respondent's orders in his reference Nos.(1) Ka.No.18435/681/Ni.Pi.2/U.1/Ko.Va.Ve/17 dated 25.11.2017 and his subsequent order in his ref. No. Ka.No.20306/850/Ni.Pi/U.1/Ko.Va.Ve/18 dated 05.10.2018 to quash the same and directing the respondents to consider the petitioner for an appointment on compassionate grounds.

For Petitioner : Mr.R.Thangasamy

For Respondents : Mr.S.Arivalagan,  
Standing Counsel

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**O R D E R**

The order of rejection dated 25.11.2017 rejecting the claim of the writ petitioner for compassionate appointment on the ground that during the death of the deceased employee, the petitioner, daughter of the deceased employee, was living with her husband and therefore, as per the Board proceedings, she is not eligible for compassionate appointment, and the subsequent order dated 05.10.2018 are under challenge in the present writ petition.

2.The fact remains that the father of the writ petitioner Late.Mr.K.Jayaram was working as Foreman Grade-I and died on 29.08.2008 while he was in service. The mother of the writ petitioner has not applied for compassionate appointment. However, the petitioner, who is the daughter of the deceased employee, submitted an application for compassionate appointment.

3.The learned counsel for the petitioner mainly contended that subsequently during the year 2011, the Board issued a revised proceedings stating that the married daughters are also eligible for appointment on compassionate grounds. In view of the fact that the order of rejection was passed in the year 2017, the policy adopted in the year 2011, to provide appointment to the married daughters, must be extended to the writ petitioner.

4.The learned counsel for the petitioner further contended that the petitioner, during the relevant point of time, was within the permissible age limit for appointment as per the Board Regulations. However, now she has crossed 40 years. But the age during the relevant point of time is to be taken into consideration for extending the benefit of compassionate appointment scheme.

5.The learned Standing Counsel for the respondents opposed the said contention by stating that the date of death of an employee is the consideration, which was shown by the authorities as per the terms and conditions of the scheme of the compassionate appointment. Date of rejection is immaterial and the date of death of the employee and the scheme which was in force during the relevant point of time are to be applied for the applications made for appointment. Thus, the reasons stated in the impugned order are in consonance with the terms and conditions of the scheme.

6.Considering the arguments of the respective learned counsels appearing on behalf of the parties to the *lis* on hand, this Court is of the considered opinion that the scheme of compassionate appointment is an exception and therefore, cannot be claimed as a matter of right. The scheme is to be implemented strictly in accordance with the policy. The Hon'ble Supreme Court of India in a very recent case in the case of ***Secretary to Government, Department of Education (Primary) and Others vs. Bheemesh Alias Bheemappa***



reported in **2021 SCC OnLine SC 1264** examined the application of the scheme of compassionate appointment with reference to the earlier judgments of the Hon'ble Supreme Court.

7. In the said judgment, the Apex Court in unequivocal terms held that "the rules of interpretation relating to 'substitution' are not to be applied to the case of 'insertion of additional words'". The various cases earlier decided by the Hon'ble Supreme Court were also considered by the Supreme Court in the case cited supra and the details of those cases are as follows:-

| <b>Citation</b>                                                                        | <b>Scheme in force on the date of death of the Government servant</b>                                                                                                     | <b>Modified Scheme which came into force after death</b>                                                                                                                                                                                                                                                                  | <b>Decision of this Court</b>                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>State Bank of India vs. Jaspal Kaur</b><br>(2007) 9 SCC 571<br>[a two member Bench] | The Scheme of the year 1996, which made the financial condition of the family as the main criterion, was in force, on the date of death of the employee in the year 1999. | The 1996 Scheme was subsequently modified by policy issued in 2005, which laid down few parameters for determining pendency. One of the parameters was to see if the income of the family had been reduced to less than 60% of the salary drawn by the employee at the time of death. Therefore, the wife of the deceased | Rejecting the claim of the wife of the deceased employee, this Court held that the application of the dependant made in the year 2000, after the death of the employee in the year 1999, cannot be decided on the basis of a Scheme which came into force in the year 2005. |



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|                                                                                           |                                                                                                                                                                                                                                                     | employee claimed the consideration of the application on the basis of parameters laid down in the policy of the year 2005.                                                                                                                                                                     |                                                                                                                                                                                    |
| <b>State Bank of India Vs. Raj Kumar</b><br>(2010) 11 SCC 661<br>[a two member Bench]     | The employee died on 1.10.2004 and the applications for compassionate appointment were made on 6.06.2005 and 14.06.2005. On the date of death and on the date of the applications, a Scheme known as compassionate appointment Scheme was in force. | But with effect from 04.08.2005 a new Scheme for payment of ex-gratia lump-sum was introduced in the place of the old Scheme. The new Scheme contained a provision to the effect that all applications pending under the old Scheme will be dealt with only in accordance with the new Scheme. | This Court held that the application could be considered only under the new Scheme, as it contained a specific provision relating to pending applications.                         |
| <b>MGB Gramin Bank vs. Chakrawarti Singh</b><br>(2014) 13 SCC 583<br>[a two member Bench] | The employee died on 19.04.2006 and the application for appointment made on 12.05.2006. A scheme for appointment on compassionate grounds was in force on that date.                                                                                | However, a new Scheme dated 12.06.2006 came into force on 6.10.2006, providing only for ex-gratia payment instead of compassionate appointment.                                                                                                                                                | This Court took the view that the new Scheme alone would apply as it contained a specific provision which mandated all pending applications to be considered under the new Scheme. |



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| <p><b>Canara Bank vs. M. Mahesh Kumar</b><br/>(2015) 7 SCC 412<br/>[a two member Bench]</p> | <p>The employee died on 10.10.1998 and the application for appointment on compassionate grounds, was made under the Scheme of the year 1993. It was rejected on 30.06.1999. The 1993 Scheme was known as "Dying in Harness Scheme."</p> | <p>The 1993 Scheme was substituted by a Scheme for payment of ex gratia in the year 2005. But by the time the 2005 Scheme was issued, the claimant had already approached the High Court of Kerala by way of writ petition and succeeded before the learned Single Judge vide a Judgment dated 30.05.2003. The Judgment was upheld by the Division Bench in the year 2006 and the matter landed up before this Court thereafter. In other words, the Scheme of the year 2005 came into force: (i) after the rejection of the application for compassionate appointment under the old scheme; and (ii)</p> | <p>This Court dismissed the appeals filed by the Bank on account of two important distinguishing features, namely, (i) that the application for appointment on compassionate grounds was rejected in the year 1999 and the rejection order was set aside by the High Court in the year 2003 much before the compassionate appointment Scheme was substituted by an ex gratia Scheme in year 2005; and (ii) that in the year 2014, the original scheme for appointment on compassionate grounds stood revived, when the civil appeals were decided.</p> |
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|                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                      | after the order of rejection was set aside by the Single Judge of the High Court                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                               |
| <b>Indian Bank vs. Promila and Another</b> (2020) 2 SCC 729<br>[a two member Bench] | The employee died on 15.01.2004 and the application for appointment was made by his minor son on 24.01.2004. On these dates, a circular bearing No.56/79 dated 4.04.1979 which contained a Scheme for appointment on compassionate grounds was in force. But the Scheme provided for appointment, only for those who do not opt for payment of gratuity for the full term of service of employee who died in harness | A new Scheme was brought into force on 24.07.2004 after the death of the employee. Under this Scheme an ex gratia compensation was provided for, subject to certain conditions. After the coming into force of the new Scheme, the claimant was directed by the bank to submit a fresh application under the new Scheme. The claimant did not apply under the new Scheme, as he was interested only in compassionate appointment and not monetary benefit. | In the light of the decision in <b>Canara Bank vs. M. Mahesh Kumar</b> , this Court held that the case of the claimant cannot be examined in the context of the subsequent Scheme and that since the family had taken full gratuity under the old scheme, they were not entitled to seek compassionate appointment even under the old Scheme. |
| <b>N.C. Santosh vs. State of</b>                                                    | Under the existing Scheme referable to                                                                                                                                                                                                                                                                                                                                                                               | But by virtue of an amendment to                                                                                                                                                                                                                                                                                                                                                                                                                           | After taking note of a reference                                                                                                                                                                                                                                                                                                              |



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| <p><b>Karnataka and Others</b><br/>(2020) 7 SCC 617<br/>(a three Member Bench)</p> | <p>Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1999, a minor dependant of a deceased Government employee may apply within one year from the date of attaining majority.</p> | <p>the proviso to Rule 5, a minor dependant should apply within one year from the date of death of the Government servant and must have attained the age of 18 years on the date of making the application. Applying the amended provisions, the appointment of persons already made on compassionate grounds, were cancelled by the appointing authority which led to the challenge before this Court.</p> | <p>made in <b>State Bank of India vs. Shree Shankar Tewari</b> to a larger bench. a three member Bench of this Court held in <b>N.C. Santosh</b> that the norms prevailing on the date of consideration of the application should be the basis for consideration of the claim for compassionate appointment. The Bench further held that the dependant of a government employee, in the absence of any vested right accruing on the date of death of the government employee, can only demand consideration of his application and hence he is disentitled to seek the application of the norms.</p> |
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|  |  | <p>prevailing on the date of death of the government servant.</p> |
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8. In para 17 of the judgment, the Apex Court made a critical analysis in respect of all the earlier judgments of the Supreme Court and made a finding as under:-

"17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law."

9. In para 18, the Hon'ble Supreme Court again reiterated that appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. The important aspect about the conflict of opinion is that it revolves around two dates, viz., (i) date of death of the employee and (ii) date of consideration of the application of the dependant. In this regard, para 19 of the judgment is relevant, which reads as under:-

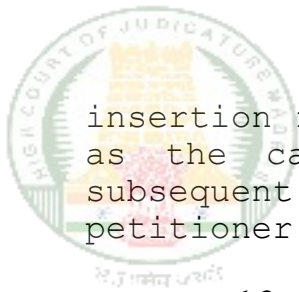
"19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of 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 variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us



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, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases 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."

10.The Hon'ble Supreme Court allowed the Civil Appeal filed by the State and rejected the application of the respondent therein for compassionate appointment. The findings of the Hon'ble Supreme Court unambiguously stipulate that the scheme is to be implemented so as to serve the purpose and object and to mitigate the circumstances arising on account of the sudden death of the Government employee. It is not as if one appointment is to be provided to the family of the deceased employee. The scope of the scheme cannot be expanded by the Courts by granting a relief of appointment. In such an event, the very constitutional scheme of appointments based on the relevant Recruitment Rules are not only diluted it will result in equal opportunity enunciated under the Constitution of India. All appointments are to be made strictly in accordance with the rules in force. Compassionate appointment, being an exception, to be restricted to the extent and in accordance with the scheme. Thus, the scheme cannot be extended in such circumstances and there is a long delay or the applicants are not falling within the ambit of the scheme itself.

11.In the present case, as on the date of death of the deceased employee, the married daughter was not eligible for appointment on compassionate grounds. The subsequent amendment or



insertion made by the Board would not have any implication, as far as the case of the petitioner is concerned and based on the subsequent insertion of a new clause in the eligibility, the petitioner cannot claim appointment on compassionate grounds.

12. These being the facts and circumstances, the orders impugned are in consonance with the legal principles settled and accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Chairman cum Managing Director,  
Tamil Nadu Generation Electricity  
Distribution Corporation Ltd.,  
144, Annasalai, Chennai-600 002.
2. The Chief Engineer Personnel,  
Tamil Nadu Generation Electricity  
Distribution Corporation Ltd.,  
144, Annasalai, Chennai-600 002.
3. The Superintending Engineer,  
Tamil Nadu Generation Electricity  
Distribution Corporation Ltd.,  
Dindigul Electricity Distribution Circle,  
Dindigul.

+1 CC to M/s.R.THANGASAMY, Advocate ( SR-8784[F] dated 25/02/2022 )

W.P. (MD) No.5076 of 2020

23.02.2022

RD(10/03/2022) 10P 5C