



W.A(MD)No.1161 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 29.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A(MD)No.1161 of 2022

and

C.M.P.(MD)No.9090 of 2022

K.Gayatri

... Appellant / Petitioner

-Vs-

The Principal Secretary,

Department of Health and Family Welfare,

Government of Tamil Nadu,

Secretariat, Fort St.George,

Chennai – 600 009.

... Respondent / Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to allow the Writ Appeal and set aside the order of this Court dated 03.03.2022 made in W.P(MD)No.9852 of 2021 on the file of this Court.

For Appellant : Mr.J.Sanjey Vignesh

For Respondent : Mr.S.P.Maharajan

Special Government Pleader



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JUDGMENT

WEB COPY [Judgment of the Court was delivered by R.MAHADEVAN, J.)

This Writ Appeal is directed against the order dated 03.03.2022 made in W.P(MD)No.9852 of 2021.

2.The appellant / writ petitioner filed the above Writ Petition seeking a direction to the respondent to consider her representations for providing compassionate appointment to her.

3.The case of the writ petitioner is that her mother, namely, K.Subbulakshmi, who was working as a Pharmacist in the Government Hospital at Palladam, died on 03.03.2009, while she was in service. Since the father of the writ petitioner was an agricultural coolie and illiterate, he had not made any application seeking compassionate appointment. Therefore, in the year 2011, though the petitioner was a minor, she submitted a representation to the Joint Registrar of Health Services, seeking compassionate appointment. Since the said representation was not in the prescribed format, the same was not considered. Thereafter, on attaining the age of majority, the petitioner submitted applications seeking compassionate appointment on 26.06.2019 and 14.10.2020 respectively. Since the said applications were made after a lapse of



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10 years from the date of death of the employee, the authorities had not considered the same. Hence, the above Writ Petition was filed.

4.The learned Single Judge, considering the facts and circumstances of the case, by order dated 03.03.2022, has passed the following order in the said Writ Petition:-

“4.In the present case, the employee died in the year 2009, the husband of the employee was not qualified as he was overaged and the petitioner, who is the daughter of the deceased employee, was minor during the relevant point of time and by the time she attaining the age of majority, ten years lapsed and applications cannot be entertained after a period of three years from the date of death of the deceased employee as per the conditions of scheme of compassionate appointment. Under those circumstances, this Court is not inclined to grant the relief as such sought for in this Writ Petition.”

5.The learned counsel for the appellant / writ petitioner submitted that the appellant made an application seeking compassionate appointment on 30.05.2011 within three years from the date of death of her mother namely, 03.03.2009. Though at the time of death of her mother, the appellant was a minor aged 12½ years, after attaining majority, she made an application on 24.05.2017 and thereafter on 26.06.2019 and 14.10.2020 respectively, seeking



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compassionate appointment, which itself is evident to prove that continuing penurious circumstances of the family forced the appellant to make successive applications seeking compassionate appointment. However, the said applications were not considered stating that these applications were made after a lapse of ten years. According to the learned counsel, the limitation of three years for making an application for compassionate appointment cannot be applied in a strait jacket formula and each and every case has to be approached differently based on its own facts, but the learned Single Judge without properly considering the facts and circumstances of the present case, has erroneously dismissed the Writ Petition, holding that the applications for compassionate appointment were filed after a lapse of ten years from the date of death of the employee. Thus, the said order is liable to be set aside.

6.The learned Special Government Pleader for the respondent submitted that as per the directions of this Court made in W.P.(MD)No.20900 of 2015, dated 19.06.2019, the Government has issued certain guidelines in respect of the appointments on compassionate grounds in G.O.(Ms)No.18, Labour and Employment (Q1) Department, dated 23.01.2020, wherein the Government has fixed three years time limit from the date of death of the Government employee to make an application for compassionate appointment



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by the legal heirs and within the said three years limitation, the petitioner was a minor and therefore, she is not entitled to compassionate appointment. The Writ Court has rightly dismissed the Writ Petition, which does not warrant any interference.

7.We have heard Mr.J.Sanjay Vignesh, learned counsel for the appellant and Mr.S.P.Maharajan, learned Special Government Pleader for the respondent.

8.It is not in dispute that the petitioner's mother died on 03.03.2009, while she was in service. At that time, the petitioner was a minor aged 12 ½ years. Though the petitioner made a representation, dated 30.05.2011 seeking compassionate appointment, at that time, she was a minor and therefore, her application was not considered.

9.This Court in W.P(MD)No.32139 of 2013, dated 26.03.2021 (***P.Prakash vs. The Government of Tamil Nadu and others***), has considered the similar issue and has held as follows:-

“6.It is not in dispute that the petitioner's father died on 10.07.2005, while he was in service. The petitioner's mother made application for compassionate appointment to the



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petitioner only on 06.08.2009, i.e, after the limitation period of three years. Therefore, the said application was rejected on the ground of limitation by the order impugned herein.

7.Though the learned counsel for the petitioner submitted that G.O.Ms.No.155 dated 16.07.1993 does not prescribe any limitation for making application for appointment on compassionate ground and the claim of the petitioner cannot be rejected on the ground of limitation, this Court is not inclined to accept the same, in view of the recent Government Order viz., G.O.Ms.No.18, Labour and Employment (Q1) Department, dated 23.01.2020, which supersedes all the earlier orders passed from 1972, as per which, the application for the compassionate ground appointment should be made within 3 years from the date of death of the Government servants. Hence, the order passed by the third respondent does not call for any interference.

8.Be it noted, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. However, it cannot be claimed as a matter of right and it is traceable only to the service rule permitting such appointment on compassionate basis or a scheme framed for this purpose. In State of Haryana v. Rani Devi [1996 (5) SCC 308], the Supreme Court was of the view that the appointment on compassionate grounds cannot be made after a lapse of the period specified in the rules as it is not a vested right to exercise at any time in future. That apart,



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in Chief Commissioner, Central Excise and Customs and others v. Prabhat Singh [(2012) 13 SCC 412], it was held by the Supreme Court that “the Court should not fall prey to any sympathy syndrome of issue direction for compassionate appointment dehors prescribed norms”.

9.It is also apropos to point out that the issue involved herein came up for consideration in WP.(MD)No.7016 of 2011 by way of reference to the Full Bench of this Court, which answered the same by order dated 11.03.2020, paragraph 32(a) of which is profitably extracted hereunder:

“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.”

10.Therefore, this Court cannot take a different stand contrary to the recent G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020 as well the decision of the Full Bench of this Court in WP.(MD).N0.7016 of 2011 dated 11.03.2020.

11.Accordingly, the writ petition stands dismissed. No costs.”

10.In view of the above, we cannot take a different stand contrary to the recent G.O.(Ms)No.18, Labour and Employment (Q1) Department, dated 23.01.2020 as well as the decision of the Full Bench of this Court in W.P. (MD)No.7016 of 2011 dated 11.03.2020.



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WEB COPY 11. Accordingly, this Writ Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

[R.M.D.,J.] & [J.S.N.P.,J.]
29.09.2022

Index: Yes/No
Internet: Yes/No

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To

The Principal Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai – 600 009.



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AND

J.SATHYA NARAYANA PRASAD, J.

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JUDGMENT MADE IN

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