

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.07.2022

PROUNOUNCED ON : 05.08.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**  
and  
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.457 of 2022

P.Babyshalini

... Appellant

Vs.

- 1.The Principal Secretary to Government,  
Environment and Forest Department,  
Government of Tamil Nadu,  
Secretariat, Chennai – 600 009.
- 2.The Principal Chief Conservator of Forests,  
Panagal Building,  
Saidapet, Chennai – 15.
- 3.The Additional Principal Chief Conservator  
of Forests,  
Madurai Region, Madurai.
- 4.The District Forest Officer,  
Madurai Division, Madurai.
- 5.The Conservator of Forest,  
Madurai Region, Madurai.

... Respondents

**Prayer:** Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.2358 of 2022, dated 11.03.2022.

For Appellant :Mr.K.Mahendran

For Respondents :Mr.J.Ashok

Additional Government Pleader

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### **JUDGMENT**

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in Writ Petition W.P.(MD)No.2358 of 2022, dated 11.03.2022.

2. The prayer in the writ petition W.P.(MD)No.2358 of 2022 is for issuance of a Writ of Certiorarified Mandamus to quash the impugned order dated 17.10.2019 passed in Na.Ka.No.670/2017 Aa5 and to direct the respondents to appoint the petitioner in any one of the post in the respondent Department suitable for the qualification of the petitioner within a stipulated period.

3. The brief facts as stated in the affidavit filed along the writ petition are that the petitioner's father, namely, R.Pandi was working as Forest Watcher at Andipatti Range and died on 05.09.1999, while he was in service leaving behind the petitioner and her mother. At the time of petitioner's father's death, the petitioner was 9 years old. The respondents, vide communication letters, dated 23.11.1999 and 03.11.2000, informed the petitioner's mother that if they want employment on the compassionate ground, they have to submit an application within 3 years from the date of death and if it is applied beyond 3 years, the same will not be considered. On receipt of the said communication, the petitioner's mother submitted an application for appointment on 28.07.2001 which is within 3 years from the date of death of the deceased employee. The 4<sup>th</sup> respondent returned the application to resubmit along with the necessary documents. After getting the necessary documents, the petitioner's mother resubmitted her application on 26.08.2002. Thereafter the 4<sup>th</sup> respondent, vide proceedings, dated 23.11.2002, communicated that in view of the ban on recruitment, the petitioner's mother's application could not be considered at

present.

4. The contention of the petitioner is that they were under the impression that after lifting the ban on recruitment, the respondents will consider and appoint the petitioner's mother in anyone of the suitable post based on her qualification. Since the petitioner and her mother did not receive any communication, once again, the petitioner's mother submitted a reminder on 14.06.2006, but the respondents failed to respond to the reminder. In the meanwhile, the petitioner had completed SSLC and she could not continue her studies further. Thereafter, based on her family circumstances, the petitioner requested the 4<sup>th</sup> respondent to appoint the petitioner in compassionate ground instead of her mother. The respondents directed the petitioner to submit an application in this regard and based on the direction, the petitioner had submitted an application on 28.07.2006 and the petitioner's mother also submits no objection letter dated 28.07.2006. On such application, the 4<sup>th</sup> respondent directed the petitioner's mother to furnish certificate to prove her mother tongue and proof of oath as per G.O.Ms.No.29, Labour and Employment Department, dated

07.03.1988, by proceedings, dated 11.05.2007. Thereafter, the 4<sup>th</sup> respondent forwarded the same to the other respondents and finally, the 4<sup>th</sup> respondent returned the application on the ground that the petitioner had not completed 18 years of age. The contention of the petitioner is that if the petitioner is minor at that point of time, the respondents ought to have considered the petitioner's mother's application which was submitted within 3 years from the date of death of the employee. The petitioner submitted that she belongs to Scheduled Caste community and she is still below poverty line and unable to maintain the family. Considering the poverty, the Tahsildar has issued an income certificate. Therefore, on such Tahsildar certificate, the petitioner submitted to the 4<sup>th</sup> respondent, who in turn forward to the 5<sup>th</sup> respondent, vide proceedings, dated 10.03.2010. Thereafter, again the file was placed before the higher authorities. Finally, the respondents, vide proceedings, dated 17.10.2019, rejected the petitioner's application with the direction that if the petitioner is aggrieved, the petitioner is at liberty to file an appeal. But the petitioner has not preferred any appeal against the communication,

dated 17.10.2019.

5. In the meanwhile, due to pandemic situations, the petitioner could not approach the High Court for relief. The contention of the petitioner is that the 4<sup>th</sup> respondent, vide communication, dated 17.10.2019, along with the covering letter, dated 01.11.2021 have rejected the application on the ground that the petitioner has not completed 18 years and the petitioner was not having the educational qualification. Challenging the said order, dated 17.10.2019, the petitioner has preferred the writ petition. The respondents have not filed any counter affidavit.

6. The learned Single Judge has held that the petitioner's father died on 05.09.1999 and the petitioner's mother had submitted an application in the year 2001 and she has crossed the age limit. Thereafter, the petitioner had submitted an application in the year 2019, after a lapse of about 20 years. After this length of time, the petitioner is not entitled to compassionate appointment and rejected the petitioner's claim and dismissed the writ petition. The learned Single Judge has relied on the judgment rendered by

the Hon'ble Supreme Court in the Union of India and others Vs. Amrita Sinha in C.A.No.7640 - 7641 of 2021, dated 11.12.2021 reported in **2021 15 Scale 174**. Aggrieved over the dismissal of the writ petition, the petitioner has filed this writ appeal.

7. Heard Mr.K.Mahendran, the learned Counsel for the appellant and Mr.J.Ashok, the learned Additional Government Pleader and perused the documents.

8. The contention of the appellant is that the appellant has submitted an application, dated 28.07.2001, wherein the appellant's mother has stated as under:

“ உயர்திரு. மதிப்பிற்குரிய அய்யா அவர்களுக்கு,

மதுரை வனக்கோட்டம், மதுரை அய்யா எனது கனவர் திரு.ஆர்.பாண்டி அவர்கள் மதுரைக்கோட்டம், ஆண்டிப்பட்டி சரகம், வேடப்பர் கோவிலில் பிட்டில் வனக்காப்பாளராக பணிபுரிந்து வந்தார். கடந்த 5.9.1999 ம் தேதி அவர் பணியில் இருக்கும்போது காலமாகிவிட்டார். எனக்கு ஒரு பெண் குழந்தை இருக்கிறது. நான் பத்தாம் வகுப்பு யூனிவர் சிட்டியில் படித்துக் கொண்டிருக்கிறேன். ஏனது கல்வி சான்றிதழ்கள் தந்தவுடன் வேலை போட்டுத் தரும்படி மிகத் தாழ்மையுடன் கேட்டுக்கொள்கிறேன்.”

The appellant's mother has stated that she is undergoing 10<sup>th</sup> standard in the University and after the completion of the Course,

she would submit the certificates and thereafter, the respondents may grant her employment. Thereafter, the appellant's mother had submitted an application on 26.08.2002. The respondents have replied, vide letter, dated 23.11.2002, wherein it is stated that since there is a ban on recruitment, the appellant's mother's application for compassionate appointment cannot be considered. Thereafter, the appellant's mother submitted another letter, dated 14.06.2006, seeking compassionate appointment based on her educational qualification. The respondents have not considered the appellant's mother's application and appellant's mother, even though she is aggrieved she has not preferred any writ petition before this Court to enforce her rights. Thereafter, the appellant on 28.07.2006 had submitted an application along with the no objection letter from her mother, stating that she has passed SSLC. Thereafter, the respondents, vide subsequent communications, directed the appellant to submit the relevant documents which the appellant is relying on. The respondents, vide letter dated, 29.05.2017, has stated that the appellant has completed only 17 years of age and directed to submit the application along with the certificate of

Tahsildar indicating the income of the family. After several communications, finally, the respondents had passed the impugned order, dated 17.10.2019, wherein, it is stated as under:

“3.அரசாணை எண் 120 தொழிலாளர் மற்றும் வேலைவாய்ப்புத்துறை, நாள் 26.06.1995ன் படி கருணையடிப்படையில் பணி வழங்க கோருவதற்கு அரசுப்பணியாளர் மரணமடைந்த மூன்று ஆண்டிற்குள் பணி வழங்க கோரி விண்ணப்பிக்கப்பட வேண்டும். அப்போது பணி வழங்கப்படவுள்ள நபருக்கு விண்ணப்பித்துள்ள பதவிக்குரிய கல்வி தகுதி மற்றும் 18 வயது பூர்த்தி ஆகி இருக்க வேண்டும். ஆனால் உங்களுக்கு 18 வயது பூர்த்தி ஆகவும் இல்லை. (பிறந்த நாள் 18.04.1990) கல்வித்தகுதியும் இல்லை. ஆகையால் கருணையடிப்படையில் பணி வழங்க விதிகளில் வழிவகை இல்லை என்ற விபரம் இதன் மூலம் தெரிவிக்கப்படுகிறது.”

9. The respondents have stated that as per G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, the legal heirs of the deceased employee ought to have submitted an application within 3 years from the date of death and they ought to have completed 18 years of age. The respondents have stated that the appellant has not completed 18 years within 3 years from the date of death of the deceased employee. Moreover, the petitioner has not submitted any application within 3 years from the date of death of the deceased employee.

10. The learned counsel appearing for the appellant

submitted that the mother of the appellant had applied within 3 years limitation period, vide letter, dated 28.07.2001. Thereafter, again, after completing the Pre-Foundation Course in Madurai Kamaraj University, the appellant's mother submitted the application on 26.08.2002. Since there was a ban in recruitment, the appellant's mother's application was not considered. Again, the appellant's mother had submitted an application on 14.06.2006, which is after lifting of ban on recruitment. If this plea is agreed, then the appellant's mother may be eligible for appointment. However, the appellant's mother has not come before this Court to enforce her rights as early as 2002 or 2006. Therefore, the said plea cannot be considered at this point of time. Since the appellant's mother has not challenged the order of rejection, dated 23.11.2002, citing the ban on recruitment, the said plea cannot be considered now, because the claim is hit by delay and laches. Moreover, it is submitted that the mother has crossed the upper age limit and now the appellant's mother is not eligible for compassionate appointment at this stage.

11. The next contention raised by the appellant is that the appellant had submitted an application on 28.07.2006, along with the appellant's mother's no objection certificate. By that time, the 3 years period had lapsed. The contention of the appellant is that there are several judgements, where it states that after attaining majority, from the date of majority within a period of 3 years, the petitioner is entitled to submit the application. Taking note of the conflicting view by different Benches of this Court on the scope of belated application by minors attaining majority or other circumstances, the matter was referred to the Full Bench of this Court by framing the following question for reference

*"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?"*

The Full Bench of this Court in W.P. (MD) Nos.7016 of 2011 and batch by judgment dated 11.03.2020 has considered all the previous judgments and discussed in detail after taking note of various Government order / guidelines in relation to compassionate appointment. Since the judgment is not reported the

relevant paragraphs are extracted below:

*“16. It is also well settled that there is no right to compassionate appointment and where there is a scheme for appointment on compassionate basis for the dependant of a person who has died in harness, then the family of the deceased employee is entitled to apply for compassionate appointment and for consideration of the application in accordance with the terms and conditions which are prescribed in the scheme.*

*17. Even before the judgment in A.Kamatchi (supra) and Renugadevi (supra) were pronounced, a Division Bench of this Court by an order dated 18.09.2006, in **E.Ramasamy Vs. Tamil Nadu Electricity Board**, W.A.Nos.336 of 2003, 997 of 2006 and 1006 of 2006 in a case arising for appointment of compassionate basis in the Electricity Board, after relying on various Hon'ble Supreme Court judgments and more particularly, the judgment of the Hon'ble Supreme Court in Sanjay Kumar Vs. State of Bihar (2000) 7 SCC 192, observed as under:-*

*16. It is, thus, clear that the courts cannot direct appointments on compassionate grounds de hors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed*

*therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been provided, otherwise. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. None of these considerations can operate when the application is made after the death of the employee. The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family.*

*17. In Sanjay Kumar's case (cited supra), the Court has expressly held that there cannot be reservation of a vacancy till such time as the applicant 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. An application made after the period stipulated under the scheme is not maintainable, and it is not permissible to hold that such application could be made after attaining majority. We are afraid, the Division Bench which rendered the judgment in Indiraniammal v. The Chief Engineer (Personnel), The Tamil Nadu Electricity Board, No.800, Anna Salai, Chennai # 600 002*

*and another) (cited supra) has not followed the earlier decisions of the Supreme Court and does not lay down correct law. The order of the learned single Judge in Meer Ismail Ali. T v. The Tamil Nadu Electricity Board (cited supra) is rather cryptic wherein the learned single Judge has observed that without going into the merits of the controversy the petitioner be given employment on humanitarian consideration. None of the judgments of the Supreme Court cited above are considered."*

*18. A perusal of the above judgment discloses that at that point of time itself there was a difference in opinion between the judgments rendered in E.Ramasamy Vs. Tamil Nadu Electricity Board and Indiraniammal Vs. The Chief Engineer (Personnel). The judgment of the Division Bench in the case of E.Ramasamy (supra) has also held that a judgment of a learned Single Judge in **Meer Ismail Ali Vs. The Tamil Nadu Electricity Board** (2004) 3 CTC 120, wherein an application for appointment on compassionate basis was filed after seven years of the death of the deceased employee to be maintainable, is contrary to the law laid down by the Hon'ble Supreme Court.*

*19. Despite the judgment of E.Ramasamy Vs. Tamil Nadu Electricity Board, passed on 18.09.2006, a Single Judge of this Court in **Mohanambal Vs. The Director Land and Survey**, (2011) 1 CTC 349, entertained an application for appointment on compassionate basis after 16 years of the death of the employee following the judgment of the Indiraniammal Vs. The Chief Engineer (Personnel).*

20. Another Division Bench in **A.Kamatchi Vs. The Chairman, Tamil Nadu Electricity Board**, (2013) 2 CWC 758, did not choose to follow the judgment of E.Ramasamy (supra). In this case, the writ petitioner's father died in harness on 12.12.1980. The writ petition was taken on 05.06.1981. The writ petitioner's mother sought for appointment on compassionate basis which was rejected on the ground that there was no vacancy. Writ petitioner attained the majority on 05.06.1999 and he applied for compassionate appointment on 28.10.1999. The learned Division Bench directed the Electricity Board to entertain the application for appointment on compassionate basis. The learned Division Bench chose to rely on certain other judgments and did not follow the judgment of E.Ramasamy (supra) holding that the judgment of E.Ramasamy (supra) has been over ruled. It is pertinent to mention here that the said finding that the judgment

of E.Ramasamy (supra) has been over-ruled is not correct. This order in Kamatchi's case (supra) is contrary to the scheme of compassionate appointment of the Electricity Board.

21. A Division Bench of this Court by an order dated 11.06.2012 in **the Secretary to the Government Vs. N.Renugadevi**, rejected an application for compassionate basis, where in that case, the employee had died in harness on 05.03.1990. The wife of the employee filed an application on compassionate basis on 12.11.1990 and on 05.06.1991, she was asked to produce the documents for being considered for appointment to the post of Sweeper on compassionate grounds.

*However, the wife of the employee made a request for an appointment of her son, who was studying in IX standard at that point of time. The request of the wife of the employee was rejected on the ground that the application made by her was belated in view of the G.O.Ms.No.202 dated 08.10.2007. The learned Division Bench in that case relied on various judgments of the Hon'ble Supreme Court.*

*22. A perusal of the above would show that there is a cleavage in the various decisions. The law on compassionate basis has been laid down in a number of judgments. As stated earlier, the object and purpose of the compassionate appointment is to provide immediate financial assistance and succour to the family of the deceased government servant so as to protect them against any form of indigent because of the death of the sole bread winner of the family. (Refer **Sanjay Kumar Vs. State of Bihar** (2000) 7 SCC 193, **Jagdish Prasad Vs. State of Bihar & another**, (1996) 1 SCC 301, **S.Mohan Vs. Government of Tamil Nadu**, (1998) 9 SCC 485.*

*23. The Hon'ble Supreme Court in **Bhawani Prasad Sonkar Vs. Union of India & Ors.**, (2011) 4 SCC 209, after examining the law upto 2011 which still holds the field, observed as under:-*

*"15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly*

*on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.*

*16. We do not propose to burden this judgment with reference to a long line of decisions of this Court on the point. However, in order to recapitulate the factors to be taken into consideration while examining the claim for appointment on compassionate ground, we may refer to a few decisions.*

*17. In Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] , while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2)*

*“2. ... The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, **mere death of an employee in harness does not entitle his family to such source of livelihood. The***

*Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”*

*18. Similarly, in SAIL v. Madhusudan Das [(2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378] this Court has observed that: (SCC p. 566, para 15)*

*“15. This Court in a large number of decisions has held that the*

*appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.” (See also SBI v. Anju Jain [(2008) 8 SCC 475 : (2008) 2 SCC (L&S) 724])*

*19. In V. Sivamurthy v. State of A.P. [(2008) 13 SCC 730 : (2009) 1 SCC (L&S) 335] this Court while observing that although appointment in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution, yet appointments on compassionate grounds are well-recognised exception to the general rule, carved out in the interest of justice to meet certain contingencies, highlighted the following two well-recognised contingencies as exceptions to the general rule: (SCC p. 741, para 18)*

*“(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.*

*(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner.”*

**20.** *Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:*

*(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 dependants 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."*

**24.** *Mr.R.Singaravelan, learned Senior counsel appearing for the*

*dependants of deceased employee has assailed the rational of providing a three year limitation for filing an application for appointment on compassionate basis by contending inter alia as under:-*

*(i) If the purpose of granting appointment on compassionate basis is to tide over the financial crisis due to the death of the bread winner, then there is no rational of having a period of three years within which the application has to be made. He would state that what has to be seen is the indigent circumstances which the family has been put into and whether such indigency continues on the date which the application is made. He would state if the indigency continues then the object of the policy to hold the family to tide over in the crisis has not been achieved and therefore a three year limitation must be dispensed with.*

*(ii) He would state that no time limit has been fixed for the employer within which the employer is bound to grant compassionate appointment. He would state that the Courts cannot overlook to the fact that the dependants keep waiting endlessly till appointment orders are given and therefore, till the time limit is not fixed for an employer within which he has to give employment to the dependant of the deceased employee, no purpose would be served in fixing the time limit only for the dependants within which the application should be made.*

*(iii) It is also contended that the Courts cannot ignore the fact that majority of the widows of Class-III and IV employees who have died in harness are uneducated and not aware of their rights. He would therefore contend that when the children attain the age of majority and*

*get aware of their rights, then such children must not be deprived of their right seeking appointment on compassionate basis provided the indigent circumstances in the family continues.*

*iv) The learned Senior counsel further submitted that the time limit should be open ended and provisions conferring power on the employer to relax, not only the educational qualifications required for appointment on compassionate basis but also the time limit within which such an application can be filed, should be made. He would state that if a bonafide application is made by a dependant of an employee who has died in harness where his illiterate widow mother did not know about the existence of a policy for appointment on compassionate basis, and the fact that such a policy exists came to the knowledge of the family only when the child attained majority, then such claims should not be denied by the employer only on the ground that the application has been filed beyond the period of three years.*

*25. Ms.Anitha Ramasamy, learned counsel for the petitioner, would contend that G.O.Ms.No.120 (supra) which brought in the time limit of three years cannot be made applicable retrospectively. She would contend that in a case where the employee had passed away prior to the 1995, then the employer must apply the scheme which existed prior to 1995 and the applications must not be rejected only because it had been filed after three years after the death of the employee. She would contend that what should be seen in such circumstances is as to whether*

*the indigent circumstances of the family continues on the date of the application and applications must be considered on their own merits on case to case basis.*

*26. On the other hand, the learned Government Pleader would state that the law on compassionate appointment is well settled and the scheme applicable when the date of the death of the employee must be followed. He would contend that now the Hon'ble Supreme Court has taken a consistent view that the family members of the deceased employee should not be permitted to move applications for appointment on compassionate basis beyond the period fixed under the scheme. The Government Pleader would rely on the judgments passed by the Hon'ble Supreme Court in Sushma Gosain Vs. Union of India [1989 (4) SCC 468], Umesh Kumar Nagpal Vs. State of Haryana [1994 (4) SCC 138], National Hydro Electric Power Corporation Vs. Nanak Chand [2004 (12) SCC 487], Bhawani Prasad Sonkar Vs. Union of India [2011 (4) SCC 209] and State of Gujarat Vs. Arvindkumar T.Tiwari [2012 (9) SCC 545], to substantiate his contentions.*

*27. As stated earlier, as early as in 1994, the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana (supra), has held that the compassionate appointment cannot be made in the absence of rules or regulations issued by the Government or public authority. The application has to be considered strictly in accordance with the scheme and no discretion is left with any authority to make compassionate*

*appointment dehorse the scheme. The scheme which is applicable on the date of the death of the employee has to be considered.*

*28. It is well settled that appointment on compassionate grounds is not a source of recruitment and an exception to general rule. The appointment to a service in a State can be made only in accordance with Article 14 and 15 of the Constitution of India. It is also now settled that the dependants of the employees who died in harness do not have any right to employment except by way of concession, that is under the service rules or by a separate scheme to enable the family of the deceased to get over financial crisis and destination. The claim of appointment on compassionate basis is therefore traceable only to the service rule permitting such appointment on compassionate basis or a scheme framed for this purpose. In none of the cases before us the scheme or the Government orders has been challenged. The appointments are therefore to be made strictly in accordance with the same. (Refer Canara Bank Vs. M.Mahesh Kumar (2015) 7 SCC 412) and Bhawani Prasad Sonkar Vs. Union of India & Ors., (2011) 4 SCC 209).*

*29. The arguments of Mr. R.Singaravelan, learned Senior Counsel, cannot be accepted in absence to a challenge to the schemes or the Government orders. The argument of Mr.R.Singaravelan assailing the 3 years limitation within which the application has to be made for appointment on compassionate basis cannot be entertained without any challenge raised to the relevant scheme or G.O.'s. **If the scheme does not permit entertaining an application by a dependant after attaining***

***majority, then such an application cannot be considered.***

*30. As stated earlier, if the policy is to ensure an immediate indigency of the family to be taken care of, then a belated application will not serve the purpose. However, it is pertinent to mention that in cases where the employee has passed away prior to 1995, then the employer has to consider the application on the facts of each case and after taking into account the indigent circumstances in which the family is placed. The Electricity Board also has to consider the applications on the basis of the schemes which were prevalent on the date of the death of the employee. The Board cannot apply a subsequent scheme and has to apply the scheme which was applicable on the date of the death of the employee.*

*31. The Hon'ble Supreme Court in Sanjay Kumar Vs. State of Bihar, (2000) 7 SCC 192, has held that when the very purpose of compassionate appointment is to see that the family gets immediate relief, then the application by the dependant of the deceased employee filed after he attains majority cannot be entertained. Considering a belated application will be contrary to the scheme framed by the Government and will be also contrary to the judgments of the Supreme Court.*

*32. 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.”*

The above views of the one of the members of Full Bench, Hon’ble Mr. Justice Subramonium Prasad was accepted by the then Hon’ble Chief Justice and Hon’ble Justice Abdul Quddhose with slight modification without any difference of opinion on the question of reference in the following lines.

*“We have had the privilege of going through the enunciation of law expounded by our brother, Hon’ble Mr. Justice Subramonium Prasad, and we find ourselves in complete agreement with the same. We, however, may add a few reasons in addition thereto so as to explain the legal canvas in order to clear any further doubts in this regard.*

*2. The basic precepts pertaining to compassionate appointment need to be emphasized. Appointments to public offices have to comply with the requirements of Articles 14 and 16 of the Constitution of India. Article 16 provides for equality of opportunity in the matters of public appointments. 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. The reason for compassionate appointment, as envisaged under the scheme and the relevant Government Orders, is the immediacy of financial hardship that is sustained by the bereaved family by the death of its earning member that is sought to be alleviated in a situation in which the Government servant died while in service. This is the underlying theme or the thread which cuts across almost every provision of the Government Order and the Scheme in question.*

*3. The main issue that has been canvassed before us is about the caption of three years imposed under the rules as a limit from the date of death of the employee for the dependent to move an application for compassionate appointment. This period of three years, in our opinion, is a reasonable period within which even a person of ordinary prudence, particularly one who is in dire need of employment, will come to know about the possibilities of any such employment.*

*4. It is well settled that ignorance of law is no excuse, but as argued by the learned Senior Counsel that there are illiterate people having no access to all sorts of information either beneficial or otherwise, the said presumption is explainable inasmuch as when an employee is in Government service or in the service of a Corporation, etc. his family knows the source of earning and the source of employment. The existence and locus of the office of employment is not unknown as the dependents immediately get information with regard to terminal benefits*

*and other pecuniary benefits that flow in the shape of family pension or other residual benefits, the disbursement whereof takes from the office where the deceased employee was employed. Thus, the plea of total illiteracy or ignorance of benefits available or about their doubts can be cast aside by seeking simple information from the office of employment. This is not a task like climbing Mt. Everest to find out the benefits to which a dependent of the deceased employee is entitled to. Thus, such information is not buried so deep so as to uncover the ignorance of even a widow or a dependent of a family who can gather such information and for which the period of three years can be reasonably said to be sufficient. In today's modern world, with various forms of communications and websites with all information available through internet services even in the remotest corners of the world, the exercise of getting information is not in a fathomless pit, but is almost available on the press of a few sensors.*

*5. A person in penury or distress will not take long to survive the vagaries of penury for seeking information of such benefits. The argument that there are some exceptional cases where people hardly get information is a far-fetched argument raised to dilute a reasonable time that has been fixed under the rules and the scheme and, in our opinion, caters sufficiently to allow a dependent to stake his/her claim for compassionate appointment. 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 to establish the existence of indigence even after attaining the age of majority. This, in our opinion, has also been taken due care of by providing a period of three years for moving an application for compassionate appointment which means that if the dependent is only about 15 years of age, he/she can apply immediately after attaining the age of majority.*

*6. The question of relaxing the period further or otherwise is within the realm of a policy to be undertaken by the Government in this regard and it is certainly not for this Court to expand the time limit more so in the absence of any such provision or rules indicating relaxation. Relaxation is a discretionary power and should not be exercised so as to swallow the main or the substantive provision thereby rendering the basic purpose and object of the legislation nugatory.*

*7. The duty of a dependent while seeking compassionate appointment is also to disclose in full, true and candid manner the details of the financial condition of the family as well as the other relevant details pertaining to the members of the family of the deceased, including their status with regard to marital, employment, income, etc., in as much as all these details have a direct bearing on the financial need of the family which has to be assessed before a decision is taken to grant the benefit of compassionate appointment.*

*8. In our considered opinion, the claim of compassionate appointment is*

*not a heritable right and being an exception to the ordinary rule of law and jurisprudence of public employment, it has otherwise also to stand the test of scrutiny of the fundamental rights guaranteed in the Constitution for the reason that there are millions who are standing in the queue for a public employment to reach their family for the first time even when there is no deceased employee in their family. Such broader aspects need not be overlooked in the name of mere sympathy or compassion. The request for appointment on compassionate grounds should be proximate to the death of the employee and, therefore, the period of three years is a reasonable period as contained in the scheme of the Government Order.*

*9. It is for this reason that the Hon'ble Supreme Court has in catena of decisions time and again laid stress that compassionate appointment should be made only in accordance with the rules or the scheme applicable and not beyond the same as travelling beyond the limits of the rules and scheme would negate the rights of those who are otherwise eligible for public appointment which would have been available to them but for the claim of compassionate appointment.*

*10. A Full Bench of the Allahabad High Court in **Shiv Kumar Dubey v. State of Uttar Pradesh (AIR 2015 All. 47)** while dealing with the same issue, particularly with regard to applications being moved after the dependent becomes a major and the application is far beyond the time prescribed for seeking public appointment under compassionate grounds, took notice of various decisions of the Supreme Court as*

*follows:*

*19. The provisions of Rule 5 of the Rules in the State of Uttar Pradesh specifically came up for consideration before the Supreme Court in Santosh Kumar Dubey v. State of Uttar Pradesh, (2009) 6 SCC 481, In that case the father of the appellant was untraced from 1981. The Supreme Court held that without going into the issue as to whether compassionate appointment could be sought in a case or deemed death under Section 108 of the Indian Evidence Act, such a right could have been exercised in 1988 itself and the period of five years under Rule 5 would not enable the appellant to compute the period until 1993. In that context, the Supreme Court observed as follows:*

*“11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the families of the deceased due to the death of the earning member of the family. There is **immediate loss of earning** for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints. 12. **The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner** of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome **sudden economic crisis** occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government*

service.

*13. In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could survive and successfully faced and overcame the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions.”*

*20. In Local Administration Department & An. v. M. Selvanayagam alias Kumarayelu, (2011) 13 SCC 42 : AIR 2011 SC 1880, the principle has been set out in the following observations of the Supreme Court:*

*“It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide **immediate succour** to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. **An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate***

*appointment, it is imperative to keep this vital aspect in mind.” In Shreejith L. v. Deputy Director (Education) Kerala, (2012) 7 SCC 248 : (AIR 2012 SC 2665), these principles have been reiterated.*

*21. In Union of India v. Shashank Goswami, (2012) 11 SC 307 : (AIR 2012 SC 2294), the Supreme Court held thus:*

*“9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right.*

*10. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the **death of the employee while in service leaving his family without any means of livelihood**. In such cases the object is to enable the family to get over sud-den financial crisis and not to confer a status on the family. Thus, **the applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in** accordance with the rules, regulations or administrative instructions taking into consideration the*

*financial condition of the family of the deceased.” These principles have been reiterated in a more recent judgment of the Supreme Court in State of U.P. v. Pankaj Kumar Vishnoi, 2013 (5) AWC 5062 (SC) : (2013 AIR SCW 5046), specifically in the context of Rule 5 of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974.*

22. *In Chief Commissioner, Central Excise and Customs, Lucknow v. Prabhat Singh ((2013) 1 UPLBEC 357), the Supreme Court has addressed words of caution in the following observations:*

*“We are constrained to record that even compassionate appointments are regulated by norms. **Where such norms have been laid down, the same have to be strictly followed...** The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. **Delay in seeking such a claim, is an anti thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved...** Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued*

*for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion.”*

23. Once again, in *MGB Gramin Bank v. Chakrawarti Singh*, (2014) 13 SCC 583 : AIR 2013 SC 3365, the Supreme Court has observed as follows:

*“Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and **it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis**, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right.*

***The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds.** Such appointment should, therefore, be provided immediately to redeem the family in*

*distress. It is improper to keep such a case pending for years.”*

*24. In several decisions, the Supreme Court has dealt with cases of minors seeking compassionate appointment. In Haryana State Electricity Board v. Hakim Singh, (1997) 8 SCC 85 : (AIR 1997 SC 3887), the Supreme Court dealt with a case of a widow who had applied, **after a period of 18 years for appointing her son who was four years old when his father died** in harness, contending that she could make the application only when her son attained majority. The High Court had allowed the writ petition. While allowing the appeal, the Supreme Court observed as follows:*

*“We are of the view that the High Court has erred in overstretching the scope of the compassionate relief provided by the Board in the circulars as above. **It appears that High Court would have treated the provision as a lien created by the Board for a dependent of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance.** The object of the provisions should not be forgotten that it is to give succor to the family to tide over the sudden financial crisis be-fallen the dependents on account of the untimely demise of its sole earning member.”*

*25. Similarly, in Jagdish Prasad v. The State of Bihar, JT 1995 (9) SC 131, the Supreme Court rejected the case of a minor who had claimed compassionate appointment after he had attained majority*

*while observing as follows:—*

*“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 the 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 can not be encouraged, de hors the recruitment rules.”*

*26. In Haryana State Electricity Board v. Naresh Tanwar, (1996) 8 SCC 23, the widow of a deceased employee had made **an application after twelve years claiming compassionate appointment for her son who had since attained majority.** The High Court allowed the writ petition holding that compassionate appointment could not be restricted to a period of three years and if assistance to the members of the family of a deceased employee is required to be given, the member of the family must necessarily attain majority before becoming eligible to apply for appointment. While setting aside the judgment of the High Court, the Supreme Court observed as follows:*

*“It has been indicated in the decision of Umesh Kumar Nagpal (1994) AIR SCW 2305) (supra) 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 deceased employee. In the other decision of this Court in Jagdish Prasad's case, 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.** It appears to us that the principle of compassionate appointment as indicated in the aforesaid decisions of this Court, is not only reasonable but consistent with the principle of employment in government and public sector. The impugned decisions of the High Court therefore cannot be sustained.”*

*11. The Full Bench further approved a Division Bench judgment in paragraph 28 in the said pronouncement, which is extracted hereunder:*

*“28. In a Judgment of a Division Bench of this Court consisting of Hon'ble Mr. Justice Sunil Ambwani and Hon'ble Mr. Justice Amreshwar Pratap Sahi delivered on 7 May, 2010 in Union of India v. Smt. Asha Mishra C.M.W.P. No. 13102 of 2010, the same principle was formulated in the following observation:*

*“The principles of consideration for compassionate appointment have been firmly settled and have been reiterated from time to time.*

*Compassionate appointment is not a vested right or an alternate mode of employment. It has to be considered and granted under the relevant rules. The object of compassionate appointment is to tide over an immediate financial crisis. **It is not a heritable right to be considered after an unreasonable period, for the vacancies cannot be held up for long and that appointment should not ordinarily await the attainment of majority.** Where the family has survived for long, its circumstances must be seen before the competent authority may consider such appointment. It is not to be ordinarily granted, where a person died close to his retirement.”*

*12. While enunciating the principles governing compassionate appointments, the Full Bench in paragraph 29 of the judgment apart from having incorporated the rules that exist in the State of Uttar Pradesh laid down the following principles, which are extracted hereunder:*

*“29. We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:*

*(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;*

*(ii) There is no general or vested right to compassionate*

*appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;*

*(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;*

*(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;*

*(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;*

*(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;*

*(vii) The burden lies on the applicant, where there is a delay in making*

*an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;*

*(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.*

*13. In the light of the above we find that the judgment in the case of **A. Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758** is not only contrary to the law laid down in the case of **E. Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080**, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above.*

*14. Where there is a contest between legal heirs, priority should be given to the one who is befitting enough to shoulder the responsibility of destitution of the family. In the event there is a Court intervention, the orders passed or final verdict should be adhered to. In the event of mere pendency, appointment may be given subject to the outcome of the litigation or any orders passed by the Court to that effect.*

*15. Apart from this, the main argument advanced by the learned senior counsel that there is no indication in the Government Order or the scheme within what period the application for compassionate employment should be disposed of, we provide that until any such rules are framed or Government Order is issued or a provision is made in the scheme, a claim of compassionate appointment on the date when it is received should be disposed of immediately without causing any delay but preferably not beyond a period of six months from the date of submission of such application. We have said this keeping in mind that certain verifications are required to be undertaken before an employment under compassionate grounds is offered and the applicant also needs to furnish necessary information as well as documents in support of his/her claim of compassionate appointment. We direct the State Government to issue a Government Order to that effect so as to bind all authorities and departments concerned to comply with the above directions strictly. Rules should be consolidated based on the principles indicated above to be applied uniformly by the State Government in all departments without deviation. It would be appropriate for the State Government to do so in order to avoid any*

*litigation.*

*16. We accordingly answer the reference in the same terms as answered by our brother Justice Subramonium Prasad, subject to the observations made herein above.”*

12. The Hon’ble Full Bench has held that the scheme does not permit entertaining an application by a dependent after attaining majority, hence the period of limitation ought to be considered from the date of death alone and not from the date of attaining majority. The appellant is seeking compassionate appointment by stating that he had applied within three years after attaining majority. The appellant’s father died on 05.09.1999, the appellant was 9 years old and attained majority on 18.04.2008. The appellant has applied for compassionate appointment on 28.07.2006. Since the application was not filed within the period of three years from the date of death of the employee, the appellant is not entitled to compassionate appointment. Moreover, when the appellant had applied on 28.07.2006, the appellant was only minor and has not attained majority.

13. The concept of granting compassionate appointment is to mitigate the immediate financial constraints of the family of the deceased employee. This cannot be stretched too far and the respondents is not expected to wait endlessly. The compassionate appointment can be granted against any vacant post only. The issue was also clarified in several judgments, where the respondents cannot create any supernumerary post to accommodate any person under compassionate appointment. Compassionate appointment can be granted only to class C and D posts alone. Therefore, seeking compassionate appointment based on the qualification is against this scheme, hence the prayer is against the scheme. The appellant's mother has completed the pre-foundation course and she sought appointment against the qualification of pre-foundation course and that would be another issue where pre-foundation course was not considered as equivalent to SSLC. The Hon'ble Full Bench has comprehensively dealt with the scheme of compassionate appointment and has clarified the entire issue. Compassionate appointment cannot be a mode of recruitment. There are several applications from the family of the deceased employees. Now, the

Government is maintaining a seniority list and several persons are waiting in the seniority list to get compassionate appointment. Therefore, the plea of compassionate appointment ought to be scrutinized strictly in accordance to the scheme and not beyond the scheme.

14. In the present case, for the reasons stated supra, the appellant has not made out any case. The learned Single Judge has rightly dismissed the case on delay and laches as well as the appellant had not attained majority as on the date of death of the deceased employee and she had not submitted application within the 3 years as stated in the scheme.

15. Therefore, the writ appeal fails and hence, the writ appeal is dismissed. No costs.

**[S.S.S.R., J.]                      [S.S.Y., J.]**  
**05.08.2022**

Index: Yes / No

Tmg

To

- 1.The Principal Secretary to Government,  
Environment and Forest Department,  
Government of Tamil Nadu,  
Secretariat, Chennai – 600 009.
- 2.The Principal Chief Conservator of Forests,  
Panagal Building,  
Saidapet, Chennai – 15.
- 3.The Additional Principal Chief Conservator  
of Forests,  
Madurai Region, Madurai.
- 4.The District Forest Officer,  
Madurai Division, Madurai.
- 5.The Conservator of Forest,  
Madurai Region, Madurai.

W.A.(MD)No.457 of 2022

**S.S.SUNDAR, J.**

and

**S.SRIMATHY, J.**

Tmg

W.A(MD)No.457 of 2022

05.08.2022