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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

and

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.1275 of 2020
and
C.M.P(MD)No.7289 of 2020

1.The Director of School Education,
Chennai-600 006.

2.The District Elementary Educational Officer,
Thoothukudi,
Thoothukudi District.

3.The District Educational Officer,
Kovilpatti,
Thoothukudi District.

4.The Additional Assistant Elementary Educational Officer,
Assistant Elementary Educational Officer,
Kayathar, Thoothukudi District. .. Appellants/Respondents

Vs.

G.Mariraja .. Respondent/ Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 28.05.2020 passed in W.P(MD)No.5552 of 2016 by this Court.

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For Appellants : Mr.S.Sajibino
Special Government Pleader
For Respondent : Mr.P.Balasubramaniam

JUDGMENT

(Judgment of the Court was made by S.S.SUNDAR.J.,)

Challenging the order passed by the learned Single Judge in W.P(MD)No.5552 of 2016 dated 28.05.2020, the above writ appeal is field.

2.Heard Mr.S.Sajibino, learned Special Government Pleader appearing for the appellants and Mr.P.Balasubramaniam, learned counsel appearing for the respondent.

3.It is represented by the learned counsel appearing on either side that the application was submitted by the minor after attaining majority. However, it is not disputed that the application is belated in the sense that the application filed or renewed by the minor did not attain majority within a period of three years from the date of death of the deceased employee.

4.Though there were different views earlier a Full Bench of this Court considered this aspect *in extenso* and held that such application beyond three years which do not fall within the scheme for compassionate appointment

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cannot be considered. In the case of Nandini Dev vs. Secretary to Government in W.P. (MD) Nos.7016 of 2011 and batch of cases, disposed of by judgment dated 11.03.2020 similar issue arose for consideration. While answering the following 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 has considered the issue in detail and held as follows:

> *"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:-*

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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.

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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

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*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*

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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*

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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***

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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

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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.

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(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."

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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

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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

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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)

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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

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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."

5.The view expressed by the ***Hon'ble Mr.Justice Subramoniya Prasad*** as read above speaking for the Full Bench was approved by adding few more paragraphs by other members of the same Bench. Speaking for the majority, the then Hon'ble Chief Justice has added as follows:

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

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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,

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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

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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*

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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

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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:

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"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,*

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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***

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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

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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

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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 at tained 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

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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

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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;

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(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

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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

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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."

6.The learned counsel appearing for the State also submitted two more judgments, particularly, the judgment of the Hon'ble Division Bench of

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this Court in the case of ***The Inspector General of Prisons, Tiruchirapalli District, Tiruchirapally and others -vs- P.Marimuth***, reported in ***2016(5) CTC 125***, wherein it is held as follows:

> *".....37. Though learned counsel for the writ petitioner submitted that under the existing scheme, and the Government orders issued from time to time, on the aspect of considering the right of the minors, at the time of death of breadwinner, in making an application for employment assistance, on attaining majority, there are no rules or guidelines restricting the period, for consideration of such application and further submitted that what is relevant to be considered by the authorities, is whether the penury of the family continued to exist, or not, even after a long time and it should be the only objective factor, to subserve proper implementation of the scheme and further contended that when the scheme does not contemplate that on the date of death of the employee, the applicant should be an adult member irrespective of the period prescribed for submission of the application, this Court is not inclined to accept the said submissions, for the reason that even if indigent circumstances of the family continued to exist for a long time, the scheme of employment assistance on compassionate grounds and modified by various Government orders issued from time to time, makes it clear that though indigent circumstance is one of the factors to be considered, while examining the eligibility of an applicant to seek for employment assistance, equally, the other requirement under the Government orders issued from time to time, that the application should be submitted within three years*

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from the date of death, cannot be ignored. A member of the family, otherwise eligible, on the date of death of the employee, has to submit the application within three years from the date of death or in a given case, if he was a minor at the time of death aged between 15 to 18 years, he can also submit an application, within three years from the date of death, on attaining majority.

38. Needless to state that for entry into any service in the State, the minimum age is 18 years, and no minor can be appointed to any service. Therefore, he cannot make any application for appointment to any post in service and no post can be kept vacant for him, till he attains majority. Posts which fall vacant have to be filled up as per the recruitment rules. Employment assistance on compassionate appointment, is only a concession, extended to an eligible member of the family, to apply for a suitable post, in the service, in which, the employee/Government servant died in harness and it is not a right, which can be exercised by a minor on attainment of majority.

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the

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applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

40. In view of the above discussion, the request of the petitioner for appointment on compassionate grounds, ought not to have been entertained, as on the date of application, he was minor, aged about 12 years. Reference can also be made to a decision made in Sushma Gosain v. Union of India reported in 1989 (4) SCC 468.....”

7.It is brought to our notice a few judgments to support the view of the Writ Petitioner that the minor is entitled to seek appointment upon attaining majority, even if the application is beyond the period of three years, after the death of the deceased employee. The Full Bench has considered all these aspects and approved the judgment of the Division Bench in the case of ***E.Ramasamy Vs. Tamil Nadu Electricity Board***, *W.A.Nos.336 of 2003, 997 of 2006 and 1006 of 2006,* dated 18.09.2006. It is held that the appointment on compassionate ground has to be strictly followed in accordance with the relevant G.Os or the scheme that has been framed by the employer and any deviation is not permissible.

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8.A submission was made by the learned counsel to the effect that the Full Bench judgment came after the application was considered by the appellants and that therefore it will have no application to the case of the writ petitioner. The said submission has no merit.

9.The counsel appearing for the writ petitioner is not able to persuade this Court that the scheme of appointment on compassionate ground enable the minor to file an application after attaining majority even though his application is beyond the period of three years. Therefore, the writ appeal is allowed. No costs. Consequently, connected C.M.P is closed.

(S.S.S.R.J.,) (S.S.Y.J.,)
03.08.2022

Index : Yes / No
Internet: yes / No
Ns
To
1.The Director of School Education,
Chennai-600 006.
2.The District Elementary Educational Officer,
Thoothukudi,
Thoothukudi District.
3.The District Educational Officer,
Kovilpatti,
Thoothukudi District.
4.The Additional Assistant Elementary Educational Officer,
Assistant Elementary Educational Officer,
Kayathar, Thoothukudi District.

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S.S. SUNDAR, J.,
and
S.SRIMATHY,J.,
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W.A(MD)No.1275 of 2020
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C.M.P(MD)No.7289 of 2020

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