



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.03.2022**

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

**W.P. (MD) No. 23012 of 2021
and
W.M.P. (MD) No. 19493 of 2021**

D.R.Karthik Kumar

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Water Supply and Drainage Board (TWAD),
31 Kamarajar Salai,
Chepauk,
Chennai - 600 005.
2. The Secretary-cum-General Manager,
Tamil Nadu Water Supply and Drainage Board (TWAD),
31 Kamarajar Salai,
Chepauk,
Chennai - 600 005.
3. The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board (TWAD),
Madurai Region,
Ganesh Nagar,
Madurai - 625 007.
4. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board (TWAD),
S.R. cum P.M. Circle,
Sivagangai.
5. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board (TWAD),
RWS Division,
Ramanathapuram.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings issued by the second respondents in 88541/Pa Ni Pi/A3/2009 dated



15.04.2016 and quash the same consequently directing the respondents to provide the compassionate appointment to the petitioner in any suitable post.

For Petitioner : Mr.C.Jeganathan

For Respondents : No appearance

O R D E R

The order of rejection dated 15.04.2016 rejecting the claim of the writ petitioner for compassionate appointment is under challenge in the present Writ Petition.

2. The father of the writ petitioner was working as Assistant and died on 08.10.2009, while he was in service. The mother of the writ petitioner submitted an application on 15.12.2010 to provide appointment on compassionate ground in favour of elder brother of the petitioner. However, the elder brother of the petitioner was not interested in pursuing the application and thereafter, the petitioner submitted an application on 13.05.2011.

3. The learned counsel appearing for the petitioner made a submission that the application submitted by the petitioner was processed and the eligibility was ascertained. However, the respondents subsequently passed the impugned order of rejection on the ground of delay.

4. This Court is of the considered opinion that even if the application is submitted within a period of three years, the appointment is to be provided within a reasonable period of time.

5. In the present case, since the elder brother of the petitioner has submitted an application, he would have pursued the matter, however, he was not interested in pursuing the application. The second application itself is untenable, in view of the fact that the first legal heir has not pursued the application. Meanwhile, there is a lapse of time. Thus, the respondents rejected the application. The very purpose of scheme is not to provide one appointment to the family of the deceased employee.

6. In the present case, the father of the writ petitioner died on 08.10.2009 and already 13 years lapsed. Now after a lapse of 13 years, the scheme of compassionate appointment cannot be extended, as the said penurious circumstances arose at the time of death of father of the writ petitioner became vanished, due to efflux of time.



7. The scheme of compassionate appointment was introduced to mitigate the circumstances arising on account of sudden demise of the Government Employee. Compassionate appointment is not a regular appointment, nor an appointment under the constitutional scheme. It is a concession granted to the Government employees on certain exceptional circumstances. Thus, the compassionate appointment can never be claimed as a matter of right and only if a person is entitled under the terms and conditions, then alone the scheme can be extended, but not otherwise. Equal opportunity in public employment is a constitutional mandate. All appointments are to be made in accordance with the rules and by providing equal opportunity to participate in the process of selection.

8. As far as the compassionate appointments are concerned, no selection is conducted, no suitability or eligibility are tested, but persons are appointed merely based on death of an employee. Therefore, compassionate appointment is to be restricted in the interest of the efficient public administration. No doubt, the Government also restricted the compassionate appointment and it is to be extended only to the deserving family and more so, not after a lapse of many years. Providing compassionate appointment after a lapse of many years would not only defeat the purpose and object of the scheme, but also the penurious circumstances arose on account of the sudden death became vanished. Thus, the lapse of time is also a ground to reject the claim for compassionate appointment. Number of judgments are delivered by this Court and the Government also issued revised instructions for providing compassionate appointment in G.O.Ms.18, Labour and Employment, dated 23.01.2020.

9. Even recently, the Honourable Supreme Court in the case of **State of Uttar Pradesh and Others vs. Premlata**, reported in **(2022) 1 SCC 30**, has made observations in respect of implementation of the scheme of compassionate appointment and the relevant portion of the observations are extracted hereunder:

"8. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in State of Karnataka vs. V.Somayashree [(2021) 12 SCC 20], had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C.Santhosh vs. State of Karnataka [(2020) 7 SCC 617], this Court has summarized the principle governing the grant of appointment on compassionate ground as under:

10.1. That the compassionate appointment is an exception to the general rule;



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Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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."

"26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [*Mumtaz Yunus Mulani v. State of Maharashtra*, (2008) 11 SCC 384 : (2008) 2 SCC (L&S) 1077] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma* [*Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

10. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

vji

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MGJ(30.03.2022) 7P 6C