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W.P. No. 6616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 6616 of 2023
and
W.M.P. No. 6682 of 2023**

D.Sathyaprabha

... Petitioner

-VS-

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai 600 009.
2. The Director of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai 600 015.
3. The District Collector,
Salem District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari to call for the records of the Third Respondent relating to the Proceedings bearing Na. Ka. No.13055/2020/Ne.3 dated 29.12.2021 and quash the same and direct the Respondents to consider the case of the Petitioner for compassionate appointment.



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For Petitioner : Mrs. T.Hemalatha
For Respondents : Mrs. R.Anitha
Special Government Pleader

ORDER

Heard Mrs. T.Hemalatha, Learned Counsel for the Petitioner and Mrs. R.Anitha, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The father of the Petitioner, viz., M.Dhanapal, who was employed as Deputy Block Development Officer in Athur Panchayat Union Wing, Rural Development and Panchayat Raj Department, Salem District, died in harness on 01.05.2014 leaving behind the following legal heirs as per the Legal Heirship Certificate dated 27.06.2014 produced by the Petitioner:-

S. No.	Name of the Legal Heir	Relationship with the deceased employee	Age as on 27.06.2014
1.	A.Kasthuri	First wife	54
2.	D.Sanmugaprakash	Son through first wife	31
3.	D.Sethumani	Son through first wife	29
4.	D.Sathyaprabha	Daughter through second wife	15



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After attaining the age of majority, the Petitioner had made a representation seeking compassionate appointment, which was rejected by Order in Na. Ka. No. 13055/2020/Ni3 dated 29.12.2021 passed by the Third Respondent. The said order is challenged in this Writ Petition.

3. The Third Respondent has filed Counter-Affidavit dated 10.04.2023 resisting the claim of the Petitioner placing reliance on Government Letter No. 34, Labour and Employment Department dated 16.04.2022 which provides that though the children born to a deceased employee through an unlawful second marriage are entitled to family pension and gratuity, they are not eligible for compassionate appointment when the first wife and the children of the deceased employee born through her have not applied for it. It is highlighted that the Petitioner, who was only 15 years old at the time of death of the deceased employee, was not then eligible for any appointment and that her application for compassionate appointment made on 05.03.2020 after she had attained majority could not be entertained. It is further explained that compassionate appointment could not be made after the lapse of more than 7 years from the time of death of the deceased employee.



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4. Having due regard to the nature of controversy involved, it must be recapitulated that the legal position is well settled that the claim for compassionate appointment is an exception to Articles 14 and 16 of the Constitution which guarantees equality of opportunity to all eligible citizens to participate in the selection for any public employment. Appointment on the mere ground of descent, would be a direct infraction of Article 16 of the Constitution. The exception on which compassionate appointment is sustained is for the reason that it seeks to tide over the sudden crisis in the family of the deceased bread winner. It is equally trite that the appointing authority cannot be expected to keep a post vacant waiting for the dependent, who is a minor at the time of death of the employee, to attain majority to seek such appointment when the relevant Governmental Orders envisage that the application for compassionate appointment has to be made within three years from the date of death of the deceased employee. It would obviously mean that it was only those of the family members of the deceased employee, who were eligible at the time of his demise, who could be considered for such appointment, and it is not an indefeasible right that can be exercised by a minor on attaining majority. This view is fortified by the decisions of the Hon'ble Supreme Court of India in

Union of India -vs- Bhagwan Singh [(1995) 6 SCC 476], ***Haryana State***



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Electricity Board -vs- Hakim Singh [(1997) 8 SCC 85], ***Sanjay Kumar -vs- State of Bihar*** [(2000) 7 SCC 192], ***Syed Khadim Hussain -vs- State of Bihar*** [(2006) 9 SCC 195], ***National Institute of Technology -vs- Niraj Kumar Singh*** [(2007) 2 SCC 481], ***Mukesh Kumar -vs- Union of India*** [(2007) 8 SCC 398], ***Shreejith -vs- Deputy Director (Education), Kerala*** [(2012) 7 SCC 248] and ***Vijaya Ukarada Athor (Athawale) -vs- State of Maharashtra*** [(2015) 3 SCC 399].

5. That apart, the principles governing compassionate appointment have been succinctly explicated by the Hon'ble Supreme Court of India in ***State of West Bengal -vs- Debabrata Tiwari*** (Order dated 03.03.2023 in Civil Appeal Nos. 8842 to 8855 of 2022) in the following words:-

“7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:-

- (i) *That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must*



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be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

- (ii) Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.*
- (iii) Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.*
- (iv) That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.*
- (v) 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 if any, received by the family, the age, dependency and*



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marital status of its members, together with the income from any other source.

7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated.

Where a long lapse of time has occurred since the date of death of



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the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance 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 for consideration.”

In the light of the said principles, it becomes apparent that the family of the deceased employee has been able to tide over the crisis with the passage of time and if any indulgence is now shown after 8 years from the time of death of the deceased employee brushing aside the germane aspects highlighted supra, it would unwittingly tantamount to unduly favouring the Petitioner to the detriment of other citizens whose gravity of suffering may be comparatively of higher magnitude, which cannot be countenanced. Viewed from that perspective, there does not appear to be any infirmity in the impugned order passed by the Third Respondent requiring interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

6. Though obvious, it is clarified that refusal by the Court to entertain this Writ Petition shall not be construed as precluding the Petitioner, if she is



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otherwise eligible and not disqualified, from participating in any recruitment for public appointment following the prescribed procedure.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is also dismissed. No costs.

20.04.2023

kst

Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 26.02.2024.

To

1. The Principal Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St. George,
Chennai 600 009.
2. The Director of Rural Development and Panchayat Raj,
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P.D. AUDIKESAVALU, J.

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