



W.P.No.8607 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 22.08.2023

ORDERS PRONOUNCED ON : 19.09.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

W.P.No.8607 of 2020

V.Sriramulu

.. Petitioner

Vs.

The General Manager,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India,
praying for issuance of Writ of Mandamus, directing the respondents to
consider the petitioner's representation dated 09.06.2020.

For Petitioner : Ms.G.Uma Maheswari

For Respondents : Mr.Krishna Ravindran
Standing Counsel



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ORDER

Heard Ms.G.Uma Maheswari, learned counsel for the petitioner and Mr.Krishna Ravindran, learned Standing Counsel for the respondent.

2. The case of the petitioner is that the father of the petitioner V.Chelliah, who was working as a Sewerage Worker in the respondent-Board died on 28.04.1989 while in service. After his demise, the petitioner's mother gave petition to the respondent several times seeking compassionate appointment. But it was not considered. Due to poor financial status of the family, the petitioner's mother used to work as house keeping worker. She also died on 19.02.2004. During the lifetime of the petitioner's mother, the petition submitted by the petitioner's mother for compassionate appointment was not considered. After demise of the petitioner's mother, the 2nd respondent sent a letter on 04.01.2007 to the mother of the petitioner for certificate verification. After demise of the petitioner's mother, the petitioner submitted petition to the respondent requesting to provide compassionate appointment. It was also not



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considered. Meanwhile, the respondent notified contract basis engagements in their Board and the petitioner applied for the same and selected and joined and is working with the respondent for 17 years as contract labour, at Board No.27, No.1, Perumal Koil Street, Madhavaram, Chennai. The Government of Tamil Nadu issued appointment orders to 77 persons on compassionate ground on 12.07.2017. The petitioner sent representation to the respondent on 09.06.2020 and the same was received by the respondent on 10.06.2020. But till now, no orders were passed. Aggrieved with the inaction of the respondent in not considering the representation of the petitioner to provide compassionate appointment for the death of his father, he filed the present writ petition.

3. A counter affidavit has been filed on behalf of the respondent.

4. As per the averments of the counter affidavit, the father of the petitioner, who was employed as Field Worker in respondent's Board died on 28.04.1989 while in service. The wife of the deceased



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employee/mother of the petitioner submitted an application dated 16.05.1990 for appointment on compassionate grounds. It is stated in the counter affidavit that the said application was on record and kept in the waiting list. The Board had deferred the recruitments including appointments on compassionate grounds since 1993 on administrative reasons and as such, all applications seeking appointment on compassionate ground have been kept in waiting list. Further, the Government imposed a ban on recruitment including compassionate appointments in Government Departments during 2001 and lifted the ban during 2006. After the ban was lifted, the Board called for certificate verification of the mother of the petitioner on 28.06.2007 and she has not attended the certificate verification. The petitioner informed that his mother died on 19.02.2004 and requested the compassionate appointment to himself *vide* application dated 13.07.2007. This application was rejected *vide* office Letter No.CMWSSB/P&A/RA4/30232/2011, dated 06.09.2011 based on the Government rules that there is no provision to consider the application of an alternate legal heir for compassionate appointment.



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5. The Government in their Letter No.8463/MW2/2012-6, dated 03.10.2013, clarified that there is no provision to consider an alternate legal heir for appointment under the scheme even when the first applicant is died while the application is pending. The subsequent application dated 09.06.2020 submitted by the petitioner was also rejected by the respondent on 08.07.2020.

6. In the counter affidavit, it is contended that the appointment on compassionate ground is a scheme extended to a dependant on the Government servant, who died on harness leaving his family in indigent circumstances subject to the conditions prescribed for the purpose. The scheme is extended for relaxing the general procedure of the recruitment during the Employment Exchange/through advertisement to all posts. The family, which suffers due to death shall apply for employment assistant under the scheme to mitigate the hardship caused to the family. The application submitted after a lapse of 18 years after the crisis over lacks merit. As such, it is contended that the order passed *vide* letter dated 06.09.2011 was in consistent with the rules and instructions



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governing appointments on compassionate ground. Accordingly, the subsequent application dated 09.06.2020 also was rightly rejected by the respondent.

7. It is also contended in the counter affidavit that after death of the petitioner's father, the respondent settled all the benefits immediately as soon as the certificates were submitted. As the financial crisis is substantiated, he does not take it necessary to apply for appointment as per the rules, but filed application to his whims and fancies.

8. Learned counsel for the petitioner submits that the petitioner is not seeking his substitution of legal heir for compassionate ground appointment and seeking compassionate appointment due to the fact that the petitioner's mother, who had sought for compassionate appointment died in the year 2004. Learned counsel for the petitioner further submits that the father of the petitioner died on 28.04.1989 while in service leaving his wife and five children. Due to sudden demise of the breadwinner of the family, they are in penury and the family is in



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indigent circumstances and as per the scheme available at the relevant point of time for compassionate appointment, the mother of the petitioner submitted a petition, which was not considered during the life time of her and the petitioner submitted application seeking compassionate appointment for the death of his father is to mitigate the hardship caused to the family.

9. Learned counsel would submit that the respondent committed illegality in rejecting the application submitted by the petitioner *vide* their letters dated 06.09.2011 and 08.07.2020, which are against to the aim and object of the compassionate appointment scheme and sought to allow the writ petition.

10. Learned Standing Counsel appearing for the respondent-Board contends that the application of the petitioner's mother was kept in the waiting list for consideration for compassionate appointment during 2007-2008 and unfortunately, she died on 19.02.2004 before being considered for appointment. The scheme of compassionate ground



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appointment do not permit to consider the appointment of alternate legal heir. As such, the rejection order passed by the respondent on 06.09.2011 is inconsistent with the rules governing the compassionate appointment grounds and he contends that there is no illegality in the order impugned in this writ petition and sought to dismiss the writ petition.

11. Learned counsel for the respondent relied on the order dated 11.10.2022 in W.P.No.16753 of 2019 of this Court and a judgment of the Hon'ble Apex Court in the case of *State of West Bengal v. Debabrata Tiwari and others* reported in **2023 SCC OnLine Sc 219**.

12. This Court gave anxious consideration to the submissions made by the respective counsels and perused the material available on record with the reliances placed before this Court. Admittedly, the father of the petitioner died on 28.04.1989 while in service leaving behind his wife and five children. The mother of the petitioner made application on 16.05.1990 requesting for compassionate appointment. The respondent



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kept that application in the seniority list till 2007. The respondent sent a letter on 28.06.2007 to the mother of the petitioner for certificate verification. Unfortunately, the petitioner's mother died on 19.02.2004 before issuing letter dated 28.06.2007 for certificate verification. In view of these facts, it is clear that the respondent-Board did not consider the application of the wife of the deceased employee/mother of the petitioner for 17 years for several reasons and her name was kept in the seniority list till 2007.

13. Admittedly, the petitioner submitted application on 13.07.2007 seeking compassionate appointment for the death of his father. The said application was rejected by the respondent on 06.09.2011 on the ground that there is no provision to consider the application of an alternate legal heir. Till then the petitioner is pursuing the matter with the respondent. The last representation submitted by the petitioner on 09.06.2020 also was rejected by the respondent on 08.07.2020. In view of this factual position, it is clear that the respondent-Board is responsible for keeping pending the application submitted by the mother of the petitioner on



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16.05.1990 till 2007 saying that her name was kept in the seniority list.

After receipt of the letter dated 28.06.2007 for certificate verification of the petitioner's mother, the petitioner submitted his application on 13.07.2007 as already his mother died on 19.02.2004. The application dated 13.07.2007 of the petitioner also was rejected by the respondent, after four years, i.e., 06.09.2011. All these facts clearly prove that the respondent is responsible for the delay caused in this issue.

14. It is to be noted that the contention of the respondent is that the application of the petitioner was rejected on the ground that it is an application submitted by an alternate legal heir. If the petitioner submitted his application prior to death of her mother and her application is pending with the respondent for consideration, there may be some substance in the contention of the respondent. But in the present case, after the death of the petitioner's mother only he made an application on 13.07.2007 and as such, it cannot be treated as application submitted by alternate legal heir.



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15. Even to assume that the petitioner's application is an alternative application, at this stage, it is appropriate to look into the comprehensive guidelines issued by the State Government with regard to appointment on compassionate grounds *vide* G.O.(Ms) No.18, Labour and Employment Department, dated 23.01.2020. These comprehensive guidelines are issued in supersition of all the earlier orders issued on this issue. In the said guidelines, to deal with the alternative application, the procedure is provided as extracted hereinunder:

“Alternative application.— If the applicant (legal heir of deceased Government servant) died after applying for compassionate ground appointment, an alternative application may be accepted from the another legal heir of the deceased Government servant, subject to conditions prescribed for compassionate ground appointment.”

16. Based on the 110 Announcement of Hon'ble Chief Minister of Tamil Nadu on the floor of the Tamil Nadu Legislative Assembly on 07.09.2021, the State Government, after careful examination, decided to issue the rules, that is Tamil Nadu Civil Services (Appointment on



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Compassionate Grounds) Rules, 2023 to provide compassionate ground appointment to the legal heirs of the deceased/medically invalidated Government servants and accordingly, the said Rules are notified vide G.O.(Ms) No.33, Labour Welfare and Skill Development (Q1) Department, dated 08.03.2023 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. In the said Rules, at Rule No.9, the procedure to consider alternative application is provided as extracted hereinunder:

“9. Alternative Application.— An applicant, within a period of one year from the date of making the application for appointment under these rules, on the ground of his ill health or for any other reason, on his request in writing, may be permitted by the appointing authority to nominate any other member of the family to make an alternative application, subject to eligibility in the order of priority specified in sub-rule (2) of rule 3.

Provided that, no such alternative application shall be permitted to be made more than once.

Provided further that, no such application shall be permitted to be made after the appointment of the



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original applicant.

(2) In the case of death of an applicant before being provided with an appointment under these rules, the other eligible member of the family, as per the order of priority specified in sub-rule (2) of rule 3, may make an alternative application for the appointment.”

17. On careful perusal of the above extracted rule, it is clearly established that the respondent has to consider the alternative application submitted by the petitioner as per the procedure prescribed under the said rules.

18. The contention of the respondent that the petitioner submitted application at his whims and fancies is not acceptable to the Court, due to the reason that within one year from the date of death of the husband, his wife made application. The said application was kept pending by the respondent for 17 years and as such, without any doubt it is to be held that the mother of the petitioner and the petitioner submitted their applications seeking compassionate appointment within the time



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stipulated in the scheme and the order of rejection of the claim of the petitioner is undoubtedly unsustainable in law.

19. The other contention of the respondent is that after lapse of considerable period, after the crisis, the petitioner is not entitled for compassionate appointment. This contention is also, in the opinion of this Court, is unsustainable due to the reason that if the family is came out from the financial crises and penury, there is no need to the petitioner to work as casual labour for all these years in the respondent-Board. The casual approach of the respondent in denying the benefit of compassionate appointment provided under the scheme to the petitioner ultimately is irrational and unreasonable.

20. It is appropriate to extract the observation of the High Court of Andhra Pradesh in ***K.Udaykiran vs. State of Andhra Pradesh*** reported in ***2021 SCC OnLine AP 2009*** at Paragraph Nos.15 and 20 as hereinafter:

“15. The respondents have to understand the very purpose of providing compassionate appointment, which is meant for providing



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employment assistance to the dependants of the deceased employee, who died in harness and thereby to provide some relief to the family from undergoing financial sufferings. When the family of the deceased employee consisting of illiterate wife and minor child, since, they have no other source of livelihood after the untimely death of the bread winner of the family, the respondents should have been much more sympathetic and practical in considering the claim of the dependants of the deceased employee for compassionate appointment.

20. This Court expects from the respondents also such type of liberal approach in considering the claims of the dependants of the deceased employees for compassionate appointments. This court holds that the respondents shall consider the cases of the dependants of the employees died in harness with human touch without considering only technicalities.”

21. In this regard, it is worthwhile to refer the case in ***Balbir Kaur v. Steel Authority of India Limited*** reported in (2000) 6 SCC 493



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wherein their Lordships (U.C. Benarjee, J speaking for the Bench) of the Hon'ble Supreme Court have held as under:

“In the case of appointment considering the social and economic justice as enshrined in the constitution, denials of deserving cases are liable to be set aside. Further, the purpose of providing compassionate ground to a son or daughter or a near relative of the deceased government servant is to render assistance to the family, which is found in indigenous circumstances. Hence, in considering the case for compassionate appointment, the authorities are supposed to adopt a human outlook.”

22. The Hon'ble Apex Court further held at Para No. 19 as extracted hereinunder:

“The concept of social justice is the yardstick to the justice administration system or the legal justice and as Respondent pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made



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for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”

23. In this regard, it is worthwhile to refer the case in ***Superintending Engineer v. V.Jaya*** reported in ***(2007) 6 Mad LJ 1011***, wherein their Lordships comprising a Division Bench of this Court have held at Para No. 7 as extracted hereinunder:

“7. However, in a case of request for appointment on compassionate ground, however, the Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot ignore the very purpose of providing employment on compassionate ground to the dependant of an employee/government servant dying in harness in preference to anybody else as it is done so in order to mitigate the hardship to the family of the employee on account of his unexpected death while still in service. The concept of compassionate employment is intended to alleviate the distress of the family and it is



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for such purpose appointments are permissible and provided even in the rules and regulations and any rigid approach or too technical objections may defeat the very object of the scheme. It is for that purpose while considering the request for compassionate appointment; the authorities are expected to act as a Good Samaritan overlooking the cobwebs of technicalities.”

24. On consideration of the reliance placed by the learned Standing Counsel for the respondent, this Court is of the opinion that the proposition of law laid down in the said judgments is not applicable to the facts and circumstances of the present case.

25. In the result, this writ petition is allowed directing the respondent to consider the claim of the petitioner for compassionate appointment in any suitable post within a period of six months from the date of receipt of a copy of this order.

26. There shall be no order as to costs.



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19.09.2023

Note: Issue order copy by 22.09.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

The General Manager,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.



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BATTU DEVANAND, J.

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Pre-delivery Order made in
W.P.No.8607 of 2020

Dated : 19.09.2023