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W.A.No.2594 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.2594 of 2023

P.Iyappan

.. Appellant

Vs.

1.The Special Commissioner and
Commissioner of Revenue Administration
Chepauk, Chennai 600 005

2.The District Collector
Office of District Collector
Vellore District, Vellore

3.The Revenue Divisional Officer
Vellore District, Vellore

4.The Tahsildar
Taluk Office
Pernampet, Vellore District

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order
dated 12.07.2022 passed in W.P.No.2599 of 2020.

For Appellant : Mr.S.N.Kirubanantham

For Respondents : Mr.E.Sundaram
Government Advocate



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JUDGMENT

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(Judgment of the court was delivered by R. MAHADEVAN, J.)

The appellant, who is the petitioner in W.P.No.2599 of 2020, has preferred this appeal, assailing the order of dismissal dated 12.07.2022 passed by the learned Judge in the said writ petition.

2. According to the appellant, his father late K.Perumal, who was employed as Village Assistant in Kizhpatti Village, Gudiyatham Taluk, Vellore District, died on 14.12.2012, while he was in service. At the time of death of his father, the appellant was a minor and therefore, his mother (wife of the deceased) filed an application on 21.07.2014 seeking appointment on compassionate grounds. Thereafter, on attaining the age of majority, he made another application on 10.06.2019 before the authorities. Since the same did not evoke any response, the appellant submitted a representation dated 16.10.2019. Thereafter, he filed W.P.No.2599 of 2020 for a direction to the authorities to consider and pass orders on his representation dated 16.10.2019 and to appoint him in any suitable post commensurate with his qualification, consequent to the death of his father Perumal on 14.12.2012, while serving as Village Assistant in



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the respondent Department. The learned Judge, by order dated 12.07.2022, dismissed the aforesaid writ petition, on the ground that the appellant had not attained the age of majority at the time of submitting his application for compassionate appointment. Aggrieved by the same, the present appeal has been filed by the writ petitioner.

3.The learned counsel for the appellant submitted that after the death of his father, the appellant made the application seeking compassionate appointment within the limitation period, which was also forwarded by the 2nd respondent to the respondents 3 and 4 for their appropriate action, by proceedings dated 06.10.2016. Further, the family of the appellant is in indigent circumstances. Without considering all these aspects, the learned Judge erred in rejecting the claim of the appellant on the ground that at the time of submitting the application for compassionate appointment, the appellant had not attained the age of majority. Therefore, the learned counsel prayed for setting aside the impugned order passed by the learned Judge and for a direction to the authorities to grant compassionate appointment to the appellant.

4.The learned Government Advocate appearing for the respondents submitted that at the time of making application by the appellant for



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compassionate appointment, the appellant has not fulfilled the criteria specified in G.O.Ms.No.155 dated 10.12.2014. However, in view of the indigent circumstances of the appellant's family, a proposal was sent to the Government on 22.04.2019, seeking age relaxation. Taking note of these facts, the learned Judge has passed the impugned order of dismissal, which does not require any interference in the hands of this Court. It is also submitted that Compassionate Appointment Scheme is a non-statutory Scheme and it is only a concession and it cannot be claimed as a matter of right to be enforced through writ proceedings. Accordingly, the learned counsel prayed for dismissal of the appeal.

5.Heard both sides and perused the materials available on record carefully and meticulously.

6.It is evident from the documents enclosed in the typed set of papers that the appellant's mother filed an application for compassionate appointment on 21.07.2014, in view of the fact that the appellant was a minor at the time of death of his father. On the other hand, the learned Judge observed that the application for compassionate appointment cannot be entertained in the light of G.O.Ms.No.155 dated 10.12.2014. But, the fact remained that considering the



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indigent circumstances of the appellant's family, the authorities sent a proposal

to the Government on 22.04.2019, seeking age relaxation. At this juncture, it

may be relevant to refer to the decision of this Court, in which, one of us is a

member (RMDJ) in the case of *Superintendent of Police, Ramanathapuram*

District vs. H.Sridevagi, made in W.A(MD)No.1063 of 2022 dated 20.09.2022.

The relevant paragraphs are extracted hereunder:

"5.The only contention of the appellant is that the respondent did not make any application within three years from the date of death of the Government Servant. Perusal of records shows that the respondent is the daughter of the Government employee, who died on 07.01.2015 and the wife of the deceased submitted application on 18.11.2015 seeking compassionate appointment well within three years from the date of death of deceased, but it was not acted upon. Thereafter, she died on 03.01.2016. Since the family of the petitioner was in penurious circumstances even before attaining majority, the petitioner submitted application on 26.12.2017 which was rejected by the appellant, stating that the respondent had not completed the age of 18 years. Thereafter, on attaining majority, she again made application on 21.09.2019.

6.The Writ Court relied upon a decision of the Division Bench of this Court reported in (2013) 8 MLJ 190 (P. Sathiarman vs. The Secretary to Government and Ors), wherein it has been held as follows:-

"7.In T. Meer Ismail Ali V. The Tamil Nadu Electricity Board, Chennai, (MANU/TN/0337/2004 : 2004 (3) CTC 120) this Court held as under:

I am, therefore, of the view that the petitioner-s case deserve consideration inasmuch as he had diligently made a claim once in the year 1997 and thereafter, immediately after attaining the age of 18, in the year 2000 and in such circumstances, rejection of his application on the ground that it was not made within three years was not justified.

8. The decision of this Court in Meer Ismail Ali (cited supra) was upheld by a Division Bench of this Court in W.A. No. 48 of 2004 dated 01.12.2004. Subsequently, the SLP filed against it was also dismissed by the Hon'ble Apex Court vide its judgment in C.A. No. 6387 of 2004, dated 04.04.2005.

9.(a) Another Division Bench of this Court in Selvi R. Anbarasi Vs.



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Chief Engineer (Personnel), T.N.E.B., Chennai [MANU/TN/8585/2006 : 2006 (2) M.L.J. 200] held as follows:-

The learned counsel for the petitioner submitted that a similar issue, rejecting the compassionate ground appointment on the ground that the application was submitted beyond three years and the same was rejected earlier on the ground that the petitioner therein has not completed 18 years of age, was considered by this Court in W.P. No. 1584 of 2011 and this Court held that the applications having been made within a period of three years and the same having not been considered on the ground that the petitioner therein was not 18 years of age at that time, the subsequent application cannot be rejected on the ground that the application was submitted within three years. The learned Judge directed the respondents not to treat the second application as an application for compassionate appointment, but it is to be treated as continuation of the application originally submitted. The said judgment is reported in T. Meer Ismail Ali Vs. Tamil Nadu Electricity Board through its Chairman, and others, MANU/TN/0337/2004 : (2004) 3 C.T.C. 120. This Court, ultimately, directed the respondents to give compassionate appointment to the petitioner therein.

(b)In W.P. No. 21512 of 2003 one Indiraniammal challenged the rejection of compassionate appointment on similar ground. The learned single Judge dismissed the writ petition by order dated 4.8.2003 against which the petitioner therein filed W.A. No. 3050 of 2003 and the said writ appeal was allowed by the Division Bench (consisting of the Hon'ble Mr. Justice P. Sathasivam (as he then was) & S.K. Krishnan, J) by order dated 8.3.2005 following the earlier judgments as well as the Supreme Court Judgment reported in MANU/SC/0400/2000 : (2000) 6 SCC 493 (Balbir Kaur v. Steel Authority of India Ltd). Against the said decision Civil Appeal No. 2039 of 2006 was filed by the respondent Board herein which was dismissed by the Honourable Supreme Court on 30.3.2010.

(c)Dismissal of another W.P. No. 775 of 2004 by order dated 29.1.2005 on the ground of delay was considered by the Division Bench (F.M. Ibrahim Kalifullah, J. (as he then was) & P. Murugesan, J) in W.A. (MD). No. 29 of 2006 and by order dated 27.6.2006 the Division Bench allowed the writ appeal and directed to give compassionate appointment to the younger son of the deceased Board employee, who died on 15.11.1996. The said order of the Division Bench was also challenged by the Board in SLP (C) No. 15534 of 2007 which was also dismissed by the Apex Court on 8.4.2009.

(d)Three writ petitions were disposed of by one of us (NPVJ) i.e., W.P. Nos. 19914 of 2004, 32409 of 2004 and 10577 of 2005 by common order dated 24.7.2006 wherein similar issue was considered. In respect of the



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above three writ petitions, which were allowed, writ appeal was filed against one writ petition in W.A. No. 1206 of 2006 while implementing the order in respect of other two cases. The said writ appeal was allowed by the Division Bench on 29.9.2006. The respondent in the writ appeal viz., J. Karthick filed review application which was also rejected by the Division Bench on 25.8.2008. Against the dismissal of the writ appeal as well as rejection of review application, the said J. Karthick filed SLP (C) No. 2004-2005/2009 and on 23.2.2009 the SLPs were tagged along with Civil Appeal No. 2039 of 2006 viz., Indiraniammal case. Subsequently the said SLP was numbered as Civil Case Nos. 5068~5069 of 2009 which was allowed on 30.3.2010 and the said order reads as follows:

Leave granted. Heard learned counsel for the parties. These Appeals have been filed against the impugned judgment of the High Court of Madras dated 29th September, 2006 and subsequent order dated 25.8.2008 passed in the review application.

The Division Bench of the High Court has reversed the judgment of the learned single Judge only on the ground of delay who directed compassionate appointment to the appellant. The appellant was a minor at the time of the death of his father and since the mother of the appellant applied within time, we are of the opinion that the appellant after becoming major should have been granted compassionate appointment. Accordingly, we allow these appeals, set aside the impugned judgment of the Division Bench and restore the judgment of the learned single Judge. No costs.

From the perusal of the above order it is evident that the order passed by the Division Bench in writ appeal and in the review petition were set aside and the order of the single Judge dated 29.9.2006 was restored.

(e)In W.P. No. 18575 of 2006 one of us (NPVJ) had an occasion to consider similar issue and allowed the writ petition on 20.6.2006 by following earlier orders. The said order was also challenged by the respondent in W.A. No. 42 of 2007 and the Division Bench (D. Murugesan, J & K. Venkataraman, J) dismissed the writ appeal on 2.7.2009. The Board filed SLP (C) No. 8305 of 2010 which was also dismissed by the Honourable Supreme Court on 6.7.2010. The said candidate viz., P. Venkatesan was given compassionate appointment by order dated 18.8.2010.

(f)Again similar matter was considered by one of us (NPVJ) in W.P. No. 29059 of 2003 and relief granted by order dated 7.7.2006, against which also the Board filed W.A. No. 1652 of 2006. The said writ appeal was dismissed by Division Bench (D. Murugesan, J. & S. Nagamuthu, J.) on



30.3.2009."

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In this case, the petitioner-s father died on 07.01.2015. She attained majority on 21.09.2019. On 03.12.2019, she has made an application for compassionate appointment.

7.The abovesaid decision makes it clear that the application submitted by the minor of the deceased Government employee after attaining majority is immaterial when the first application was made by eligible member of the family within three years from the date of death of the Government employee. In this case also, the mother of the petitioner has submitted application seeking compassionate appointment within three years. Thus, as held in the abovesaid decision, the application submitted by the respondent in the year 2019 has to be treated as continuation of the application submitted by her mother in 2015 which was well within three years time limit. The object of compassionate appointment is to give succor to the family which has been suddenly plunged into penury due to untimely death of its sole breadwinner. In this case, the deceased died leaving behind his wife and respondent / daughter as legal heirs. In 2016, the mother of the petitioner also died and the respondent is stated to be under the care and custody of her grandparents. Thus, the abovesaid facts also constitute penurious circumstances of the family of the deceased. Thus, we find no infirmity in the order passed by the Writ Court and therefore, we dismiss the Writ Appeal. Accordingly, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed."

7.In the present case, admittedly, the father of the appellant worked in the respondent department and he died on 14.02.2012, while he was in service. Within the period of limitation, the application seeking compassionate appointment was made, initially by the appellant's mother in view of the fact that the appellant was a minor at that time, and thereafter, by the appellant, in continuance of the representation submitted by his mother. Subsequently, taking note of the indigent circumstances of the appellant's family, a proposal was sent to the Government by the authorities for granting compassionate



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appointment, but it was not fructified. The Hon'ble Supreme Court in *Malaya*

Nanda Sethy v. State of Orissa and others [2022 LiveLaw (SC) 522], has held

that the authorities must consider and decide the applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such applications.

It is also to be noted that the Government Orders issued earlier *qua* compassionate appointment, underwent various changes subsequently. In the said circumstances, applying the principles enunciated in the above judgment to the facts of the present case, this court is of the view that the candidature of the appellant has to be considered for appointment on compassionate grounds.

8. In such view of the matter, the order passed by the learned Judge is liable to be set aside and is accordingly, set aside. Consequently, the respondents are directed to consider the application of the appellant for compassionate appointment, keep his name in the waiting list, and grant appointment in any one of the eligible posts in the respondent Department, as and when his turn comes up.

9. With the above directions, the writ appeal stands disposed of. No costs.

[R.M.D, J.] [M.S.Q, J.]
29.11.2023

Neutral Citation : Yes



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