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W.A.No.3590 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**W.A.No.3590 of 2019
and
C.M.P.No.23052 of 2019**

The Oriental Insurance Company,
Rep. by its Regional Manager,
Division Office-2,
UTL Building, III Floor,
No.8, Esplanade,
Chennai.

... Appellant

Vs

1.P.Arun Gandhi

2.Union of India,
Rep. by its Secretary,
Ministry of Company Affairs,
Shastri Bhavan, New Delhi.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the final order dated 10.12.2011 made in W.P.No.21098 of 2006.

For Appellant : Mr.A.Thayaparan

For R1 : Mr.S.Prabhu

For R2 : Mr.K.Gunasekar



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JUDGMENT

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(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal is directed against the order passed by the Writ Court dated 10.12.2011 made in W.P.No.21098 of 2006.

2.One Panneerselvam was working at the appellant's office and he died on 14.11.1996 suddenly while he was in service.

3.At the time of the death of the father of the first respondent herein who was the writ petitioner since he was a minor, no application was made to seek for compassionate appointment.

4.Subsequently only on 13.03.2006, application had been made to seek for compassionate appointment. Since the same has not been considered, the respondent/writ petitioner moved the Writ Court and filed the said writ petition in W.P.No.21098 of 2006 seeking for a writ of Mandamus directing the appellant Department to consider the case of the first respondent/writ petitioner for compassionate appointment.



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5.The said writ petition having been considered was allowed by the order of the learned Judge dated 10.12.2011 where the learned Judge has stated that it cannot be stated that the delay is attributable on the part of the son of the deceased employee because at the time of the death of the employee admittedly the legal heir i.e., son of the deceased employee was a minor. Therefore, after he attaining the majority he was able to give such an application seeking for compassionate appointment only in the year 2006. Therefore that has been mainly taken into account by the learned Judge and ultimately, the learned Judge has allowed the writ petition. Aggrieved over the same, this writ appeal has been directed.

6.However, Mr.A.Thayaparan, learned counsel appearing for the appellant has brought to our notice that the compassionate appointment scheme which was in vogue till 2002 itself has been modified and under the said modification which has been issued on 23.07.2002, the scheme for grant of monetary compensation in lieu of compassionate ground appointment to the legal heirs of the deceased employee has been brought in and has been executed.



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7. Therefore, he would submit that well prior to the application that has been made by the first respondent herein to seek for compassionate appointment in 2006, the scheme itself has been modified into a monetary compensation instead of compassionate appointment with effect from 23.07.2002. Hence, the question of considering his application even otherwise on merits for compassionate appointment did not arise at the time.

8. However, the learned counsel appearing for the appellant fairly submit that this position has not been brought to the notice of the learned Judge who dealt with the writ petition.

9. We have heard Mr.S.Prabhu, learned counsel appearing for the first respondent who would submit that, since the first respondent was a minor at the time his father died in 1996, there was no chance of him to make any application being a minor, therefore only after he attains the majority, he was able to make an application in the year 2006. Therefore, merely because the scheme has been modified in the year 2002 in between, the said Scheme that has been modified in the year 2002 cannot be taken into account because as on date of the death of the



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employee i.e., in the year 1996 what was the Rule that was prevailing shall alone be taken into account.

10.We have considered the said rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

11.Insofar as making an application seeking compassionate appointment, the law is well settled that the maximum period is three years. Even though such a fixation has not been made in the scheme formulated by the appellant Department, it is a settled proposition that within three years period from the date of death of an employee, such an application seeking appointment should have been made.

12.The reason being for fixing such a limitation is because the very compassionate appointment scheme itself is only to bail out the family which is in penurious circumstances and if that circumstances was not prevailing for three years beyond which there is no scope for considering any compassionate appointment.



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13. In the present scheme, even though such a strict limitation has not been prescribed it is to be noted that on 23.07.2002 the scheme itself has been modified into a monetary compensation scheme and after three years of that modification only i.e., in the year 2006 application seeking compassionate appointment has been made by the first respondent.

14. Therefore, at no stretch of imagination it can be stated that the said application submitted in the year 2006 should be get back to 1996.

15. The reason being that in 1996 admittedly the first respondent was minor and therefore, there was no chance of considering his application had it been filed even in the year 1996.

16. Therefore, if at all the respondent is entitled to seek for monetary compensation under the modified scheme with effect from 23.07.2002, that can be pursued but that issue does not arise because the death occurred for the employee in the year 1996 and 27 long years have gone. Therefore, at this juncture whether such kind of persuasion is possible is a question for which we do not want to express our mind and it is for the respondent and the appellant Department to decide mutually.



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WEB COPY 17.Insofar as the merits of the case seeking compassionate appointment and a direction has been given to that effect by the learned Judge through the impugned order is concerned, we feel that for the reason stated above, the said order would not stand in the legal scrutiny. Therefore, we are of the firm view that the said order is liable to be interfered with.

18.In the result, the impugned order is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

09.08.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

Union of India,
Rep. by its Secretary,
Ministry of Company Affairs,
Shastri Bhavan, New Delhi.
Shastri Bhavan, New Delhi.



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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

CSE

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