



W.A.(MD) No.603 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
10.01.2023	12.01.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD) No.603 of 2022

M.Sugadav

... Appellant

-vs-

1.The Managing Director
Tamil Nadu Water Supply
and Drainage Board
Chepauk, Chennai-5

2.The Secretary cum General Manager
Tamil Nadu Water Supply
and Drainage Board
31, Kamarajar Salai
Chepauk, Chennai-5

3.The Executive Engineer
Tamil Nadu Water Supply
and Drainage Board
RWS Division
Perambalur

... Respondents



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Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 23.02.2022, passed in W.P.(MD) No.3722 of 2020, on the file of this Court.

For Appellant : Mr.N.Dilip Kumar

For Respondents : Mr.B.Vijay Karthikeyan

J U D G M E N T

D.KRISHNAKUMAR, J.

Challenge in this writ appeal is to the order, dated 23.02.2022, passed in W.P.(MD) No.3722 of 2020, whereby and whereunder, the request of the appellant for appointment on compassionate grounds has been rejected.

2. The appellant's father A.Muthusamy was working as an Assistant Executive Engineer in the third respondent's office. Muthusamy died in harness on 03.09.2007, while he was in service, leaving behind his wife Umarani, son Sugadev (appellant herein) and daughter Kaviya. On 04.07.2008, the appellant's mother made an application to the respondents seeking appointment on compassionate grounds. However, there was no response to the same from the respondents. Therefore, on 26.12.2014, the appellant made an application to the respondents seeking appointment on



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compassionate grounds. Since there was no response for the said application also, the appellant filed W.P.(MD) No.3363 of 2015 seeking direction to the respondents to consider his application dated 26.12.2014. This Court, by order dated 11.03.2015, directed the respondents to consider the application made by the appellant's mother dated 04.07.2008 followed by the appellant's application dated 26.12.2014 and pass suitable orders, within a period of twelve weeks. Based on the directions issued by this Court, the first respondent passed an order dated 15.06.2015 rejecting the claim of the appellant on the ground that he is a minor. Aggrieved over the same, the appellant filed W.P.(MD) No.16026 of 2015 seeking set aside of the said rejection order dated 15.06.2015. This Court, by order dated 16.02.2016, set aside the order dated 15.06.2015 passed by the first respondent and directed the respondents 1 and 3 to consider the appellant's application, within a period of four weeks. Thereafter, based on the communication sent by the third respondent, the appellant produced the relevant materials in support of his claim of compassionate appointment. However, the first respondent passed an order dated 22.08.2019 rejecting the appellant's claim of compassionate appointment, on the ground that his sister is working as Doctor. Challenging the same, the appellant filed W.P.(MD) No.3722 of 2020 before this Court. The Writ Court, after hearing both sides, by order dated



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WEB C 23.02.2022 dismissed the writ petition, holding that the appellant was a minor at the time of death of his father and his sister was working as Doctor and therefore, the appellant is not eligible for compassionate appointment. Challenging the same, the present writ appeal has been preferred.

3. Learned counsel for the appellant submitted that just because of delay in submitting application for compassionate appointment, it cannot be said that the family of the deceased Government servant has got over the indigent circumstances. Though the appellant's mother made an application within the prescribed period of three years, the respondents have not considered the same. Further, even though the appellant's sister is working as a Doctor, the appellant cannot be denied appointment on compassionate grounds on account of the death of his father and therefore, the appellant may be considered for appointment on compassionate grounds.

4. Learned counsel appearing for the respondents, on instructions, submitted that the appellant was a minor at the time of death of his father and after attaining the age of majority, he made an application for compassionate appointment. Normally, application for compassionate appointment would be considered, provided the applicant satisfies the



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eligibility criteria. In the present case, since the appellant does not satisfy the eligibility criteria as he was minor at the time of death of his father and his sister was working as a Doctor, the learned Writ Court has rightly dismissed the writ petition filed by the appellant and it does not warrant any interference of this Court.

5. Heard the learned counsel for the appellant, learned counsel appearing for the respondents and perused the materials available on record.

6. The scheme of compassionate appointment was introduced only to mitigate the circumstances arising on account of sudden demise of the Government employee. Appointment under compassionate grounds is neither regular appointment, nor under the constitutional scheme. It is nothing but 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 of the scheme, then alone the scheme can be extended, but not otherwise.



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7. The Government has also restricted the compassionate appointments. 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, non-eligibility for compassionate appointment is also a ground to reject the claim for compassionate appointment. The Government has also issued revised instructions for providing compassionate appointment in G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020.

8. Identical issue came up before the Honourable Division Bench of this Court in W.A.No.1749 of 2019 (***Sudhanthira Devi vs. The State of Tamil Nadu and others***) [in the said Judgment, myself (DKKJ) is one of the member] and the Division Bench, by Judgment dated 03.09.2019, following the decisions of the Honourable Supreme Court, has held that applications for compassionate appointment submitted beyond the period of three years cannot be entertained.

9. In ***Government of India and another v. P.Venkatesh [(2019) 15 SCC 613]***, the Honourable Supreme Court has held as follows:



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“8. This ‘dispose of the representation’ mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9-8- 2016, nearly twenty one years had elapsed since the date of the death of the employee.

9. ...

10. Bearing in mind the above principles, this Court held: (Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138) SCC pp.141-42, para 6)

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”



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10. The Honourable Full Bench in Paragraph No.13 of the **Judgment dated 11.03.2020 in W.P.(MD) No.7016 of 2011** has held as follows:

“13. In the light of the above we find that the judgment in the case of A.Kamatchi v. The Chairman, Tamil Nadu Electricity Board, (2013) 2 CWC 758 is not only contrary to the law laid down in the case of E.Ramasamy v. The Chairman, Tamil Nadu Electricity Board, (2006) 4 MLJ 1080, but it also has, as indicated by our brother, Justice Subramonium Prasad, in his judgment, misconstrued the same. In view of what has been indicated above we are also of the view that the period of three years is a rationale and reasonable period under the relevant Government Orders and the rules. We may, however, observe that it is open to the State Government to make any provision for relaxation of the period in exceptionally rare cases on the principles as indicated herein above.”

11. 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:



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“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;

10.2. That no aspirant has a right to compassionate appointment;

10.3. The appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

10.4. Appointment on compassionate ground can be made only on fulfilling the norms laid down by the State’s policy and/or satisfaction of the eligibility criteria as per the policy;

10.5. The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.



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9. As per the law laid down by this Court in a catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

9.1. In the case of **H.P. v. Shashi Kumar [(2019) 3 SCC 653]**, this Court in paras 21 and 26 had an occasion to consider the object and purpose of appointment on compassionate ground and considered decision of this Court in **Govind Prakash Verma v. LIC [(2005) 10 SCC 289]**, it is observed and held as under:

“21. The decision in **Govind Prakash Verma**, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in **Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138]**. The principles which have been laid down in **Umesh Kumar Nagpal** have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are



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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



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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*



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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.”

12. Furthermore, in G.O.(Ms) No.18, Labour and Employment (Q1) Department, dated 23.01.2020, the Government has clearly prescribed the time limit to prefer application for compassionate appointment as three years from the date of death of the Government servants and the minimum age limit of the applicant at the time of making application as 18 years.

13. In the case on hand, admittedly, the appellant's father died on 03.09.2007; at that time, the appellant was minor and after attaining the age of majority, he made application only on 26.12.2014, after a lapse of nearly seven years, to the respondents for compassionate appointment and it is to be noted that his sister was working as a Doctor during the relevant period. Hence, it cannot be said that the appellant was in indigent circumstance on account of the death of his father. Therefore, in view of the above settled legal



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position, the claim of the appellant for compassionate appointment cannot be entertained and it deserves to be rejected. Accordingly, the impugned order passed by the Writ Court does not warrant any interference of this Court.

14. In fine, the writ appeal fails and it is dismissed. No costs.

[D.K.K., J.]

[R.V., J.]

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Index : Yes / No
Internet : Yes / No
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JUDGMENT
IN
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