



W.P.(MD) No.13033 of 2015

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**ORDERS RESERVED ON : 08.11.2023**

**ORDERS PRONOUNCED ON : 10.11.2023**

**CORAM**

**THE HON'BLE MR.JUSTICE BATTU DEVANAND**

W.P.(MD) No.13033 of 2015

and

M.P.(MD) No.2 of 2015

1.B.Ambika

2.Mathan Mohan

... Petitioners

Vs.

1.The Divisional Manager,  
Life Insurance Corporation of India,  
Divisional Office,  
9A Punitha Vathyar Street,  
Palayamcottai, Tirunelveli-627002.

2.The Regional Manager,  
Life Insurance Corporation of India,  
Zonal Office, New No.153, Old No.102,  
LIC Building, Anna Salai,  
Chennai-600 002.

3.The Deputy Secretary,  
Life Insurance Corporation of India,  
Central Office, Nariman Point,  
Mumbai-21.

... Respondents



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**Prayer:** Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration declaring the Clause 21(iii) of the Life Insurance Corporation of India (Recruitment of Class III and IV Staff) Instructions, 1993 as arbitrary and unreasonable and set aside the order passed by the 1<sup>st</sup> respondent in Ref:LP&IR dated 18.02.2015 and the order in Ref:SZ/IR/ER Desk dated 25.03.2015 issued by the 2<sup>nd</sup> respondent and the order in Ref:PER/MPR/COMP/15-16/L46 dated 29.05.2015 issued by the 3<sup>rd</sup> respondent and consequently direct the respondents to provide appointment to the 2<sup>nd</sup> petitioner on compassionate basis.

***[Prayer-Amended vide order dated 10.11.2023 in W.M.P.  
(MD) No.17161 of 2023 in W.P.(MD) No.13033 of 2015]***

|                 |   |                                                                |
|-----------------|---|----------------------------------------------------------------|
| For Petitioner  | : | Ms.R.Jenifer Bibin<br>for Ms.D.Geetha                          |
| For Respondents | : | Mr.K.Vinoharan<br>Standing Counsel<br>for Mr.G.Prabu Rajadurai |

### ORDER

The petitioners are the wife and son of an employee in Life Insurance Corporation of India, who died in harness. Originally, the husband of the 1<sup>st</sup> petitioner was employed under the respondent-Corporation as a sub-staff. He was issued with a charge memo and after



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enquiry, he was removed from service on 16.04.1999. He raised an industrial dispute under the Industrial Disputes Act and the same was referred for adjudication before the Central Government Industrial Tribunal (CGIT), Chennai. Pending the said dispute, he died on 07.04.2002. Immediately, the petitioners filed an additional claim statement before the CGIT. The CGIT allowed the dispute by an award dated 25.05.2004 holding that the removal of the employee from service is not valid and directed the respondents to pay all the consequential benefits including back wages from the date of removal till the date of death to the legal heirs. With regard to the claim of compassionate appointment, the Tribunal held that the said relief could not be given by the Tribunal and hence, not entitled for compassionate appointment. Thereafter, the 1<sup>st</sup> petitioner submitted applications seeking compassionate appointment on 05.03.2005 and 15.11.2005 to the respondents. There was no action by the respondents on the said representations.

2. Meanwhile, the Management of the respondent-Corporation filed a writ petition in W.P.No.3254 of 2005 challenging the award passed



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by the CGIT. The said writ petition was dismissed on 19.11.2010. After dismissal of the writ petition, the 1<sup>st</sup> petitioner made several representations to the respondents for compassionate appointment. By a letter dated 12.01.2012, the Senior Divisional Manager of the respondent-Corporation rejected the request for compassionate appointment stating that it is not possible to consider the request as per the award of the Tribunal and the order passed by the High Court in the writ petition. The same was challenged by the 1<sup>st</sup> petitioner by filing writ petition in W.P.(MD) No.5411 of 2012. The said writ petition was dismissed by order dated 03.10.2012. Against the dismissal order, a writ appeal in W.A.(MD) No.420 of 2013 was filed and the same was allowed holding that the Tribunal had not opined one way or other on the issue of compassionate appointment, leaving the aspect to be examined by the respondents. It was further held that the application for compassionate appointment has to be considered as one within time and the respondents were called upon to take a decision on the application on merits.



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3. In compliance of the judgment in W.A.(MD) No.420 of 2013, the 1<sup>st</sup> respondent passed an order dated 18.02.2015 rejecting the claim for compassionate appointment stating that the elder son is employed abroad and getting a handsome salary. It is also stated that there is no genuine need for employment to any member of the deceased employee quoting the standard of living of the family. Against the said order, an appeal was preferred to the 2<sup>nd</sup> respondent and the same was also rejected by an order dated 25.03.2015. Against the said order, a further appeal was preferred to the 3<sup>rd</sup> respondent and the 3<sup>rd</sup> respondent confirmed the order passed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents by order dated 29.05.2015. Aggrieved by the same, the present writ petition is filed.

4. On behalf of the respondents, a counter affidavit has been filed.

5. The respondents averred in the counter affidavit that the first petitioner's request for appointment on compassionate grounds for her second son, i.e., the 2<sup>nd</sup> petitioner herein was rejected on the premise that the elder son of the deceased one Mr.A.Jeganmohan was working in a foreign



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company with a handsome salary and that a member of the family being gainfully employed, disentitles the 2<sup>nd</sup> petitioner for appointment on compassionate grounds as mandated under Clause 21(iii) of the Life Insurance Corporation of India (Recruitment of Class III and IV Staff) Instructions, 1993 (hereinafter referred to as “the Instructions, 1993”).

6. Learned counsel for the petitioners submits that the respondents opined that the elder son of the 1<sup>st</sup> petitioner is employed abroad and getting a handsome salary. It is not known as to how the respondents have arrived at the conclusion that the elder son is getting a handsome salary. The learned counsel further submits that the respondents failed to appreciate the fact that the 2<sup>nd</sup> petitioner's brother is married and is having an independent family to be taken care of and he is not supporting the petitioners. In the absence of any of these evidences, the conclusion arrived at by the respondents that the 2<sup>nd</sup> petitioner's brother is earning and therefore, there is no need for compassionate appointment to the 2<sup>nd</sup> petitioner is arbitrary and the impugned orders are liable to be set aside.



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7. Learned counsel for the petitioners contends that the conclusion arrived at by the respondents that the petitioners' family do not have a genuine need for appointment is based on the finding arrived by an enquiry. But, the petitioners were not given an opportunity of hearing before arriving at such a conclusion. It is also not known on what basis, the respondents arrived at such a conclusion. As such, the findings arrived by the respondents are in violation of the principles of natural justice.

8. The learned counsel would submit that the impugned orders are in violation of the legal maxim “*audi alteram partem*” i.e., no man shall be condemned unheard. In the present case, the respondents have conducted an enquiry and arrived at a finding, the basis of which is not known. The petitioners were not put on notice about the issues, nor the respondents clarified the same with the petitioners. Hence, the impugned orders are liable to be set aside.

9. The learned counsel for the petitioners further contends that the respondents have failed to appreciate the fact that both the petitioners are



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unemployed and do not have any means of income. As such, the finding of the respondents, that the petitioners' family do not have genuine need for employment, has no substance and sought to allow the writ petition.

10. On the other hand, learned Standing Counsel appearing for the respondents would contend that compassionate appointment can only be an offer and cannot be a matter of right. This is a methodology envisaging possibilities for giving appointment in the Corporation in pursuant to the proviso stipulated for the same. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit through proper recruitment process. However, to this general rule, which is to be followed strictly in every cases, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One of such exceptions is in favour of the dependants of the employee dying in harness and leaving his family in penury and without any means of livelihood.





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of the petitioners is in accordance with the relevant rules and the same cannot be interfered with.

14. This Court gave anxious consideration to the submissions of the respective counsels and perused the material available on record carefully.

15. The husband of the 1<sup>st</sup> petitioner was employed in the respondent-Corporation and was dismissed from service on 16.04.1999. The matter was referred to the CGIT. During the pendency of the proceedings before the Tribunal, he died on 07.04.2002. The Tribunal passed an award on 25.05.2004 in favour of the deceased employee. In fact, after the demise of her husband, the 1<sup>st</sup> petitioner sought to make a prayer before the Tribunal for compassionate appointment for her son. But, the Tribunal opined that the 1<sup>st</sup> petitioner would have approached the respondent-Corporation directly seeking compassionate appointment.



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16. The 1<sup>st</sup> petitioner made an application on 15.11.2005 seeking appointment for her son, i.e., the 2<sup>nd</sup> petitioner herein on compassionate grounds. But, no action was taken by the respondents. Meanwhile, the respondents filed a writ petition challenging the award of the Tribunal, which was dismissed on 19.11.2010. Thereafter, the 1<sup>st</sup> petitioner submitted second application on 21.06.2011 followed by reminders. The respondent-Corporation *vide* its letter dated 12.01.2012, rejected the request, as it could not be considered in view of the award of the Tribunal dated 25.05.2004. Aggrieved by the same, the petitioner filed a writ petition in W.P.(MD) No. 5411 of 2012. The said writ petition was dismissed by the Court on 03.10.2012 holding that the application for appointment on compassionate grounds after lapse of nearly 10 years is not competent on relying the judicial pronouncements. The 1<sup>st</sup> petitioner preferred writ appeal in W.A. (MD) No.420 of 2013. A Division Bench of this Court by judgment dated 13.11.2014, allowed the writ appeal.



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17. The opinion of the Division Bench at Paragraphs No.7 and 8 is extracted hereinunder:

*“7.In the facts of the present case, it may be noticed that there could have been no occasion for any request for compassionate appointment to be considered, at least till Award of the Tribunal was made, as the deceased employee had, in fact, been dismissed from service. It means, even the monetary benefits were not paid, on account of his dismissal, putting the family into hard times. This was cured only by the award of the Tribunal, dated 25.05.2004. The matter, however, did not end at that, as this award was further assailed before this Court and interim stay was operating till the writ petition was dismissed on 19.11.2010. Thus, there was no succour to the family from 2002 to 2010, for a period of eight years, on account of the aforesaid facts.*

*8.The applications for compassionate appointment was filed by the wife of the deceased in 2005 and 2011. Such an application cannot be stated to be belated or delayed. The reasoning for rejection cannot be sustained, as the Tribunal had not opined, one way or the other, on the issue of compassionate appointment, leaving*



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*that aspect to be examined by the respondent. The respondent Corporation has its own policy for compassionate appointment.”*

18. It is an undisputed fact that though the husband of the 1<sup>st</sup> petitioner died on 07.04.2002 and the 1<sup>st</sup> petitioner submitted application for compassionate appointment for her son in the year 2005 and 2011 but till disposal of the writ appeal in W.A.(MD) No.420 of 2013 on 13.11.2014, the respondents did not consider the representation of the petitioners submitted on 05.03.2005. After disposal of the writ appeal, the petitioners submitted second representation on 15.11.2005 seeking compassionate appointment. Thereafter, the 1<sup>st</sup> respondent rejected the claim of the petitioners by order dated 18.02.2015. Thereafter, the appeals filed by the petitioners before the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were also dismissed by orders dated 25.03.2015 and 29.05.2015 respectively. Aggrieved by the orders passed by the respondents in rejecting the claim for compassionate appointment, the petitioners filed the present writ petition in the year 2005. Till then, this writ petition is pending before this Court.



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19. At this juncture, it is very pertinent to note one issue. Though the present writ petition is filed in the year 2015, the respondents did not file their counter affidavit till 24.07.2023. In fact, as per Rule 24(2) of Madras High Court Writ Rules, 2021, any respondent, who intends to file a counter affidavit, shall, unless otherwise ordered, file it within eight weeks from the date of service on him of the notice or rule nisi provided the Court may extend the time or condone the delay for sufficient cause. Contrary to the said Rule, the respondents filed their counter after eight years. Non-filing of the counter affidavit by the respondents within the stipulated time is also one of the reasons for pendency of the writ petition for eight years. Hence, the respondents cannot contend that the petitioners are not entitled to claim compassionate appointment at this belated stage. From the date of death of the husband of the 1<sup>st</sup> petitioner, continuously the litigation is continuing before the Industrial Tribunal and the High Court. As such, the contention of the respondents that after this long period, the petitioners cannot claim compassionate appointment on compassionate grounds is unsustainable. There is no delay on the part of the petitioners. Due to



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several legal proceedings only, the time lapsed. The respondents are also responsible for the delay.

20. While allowing the writ appeal, a Division Bench of this Court in its judgment dated 13.11.2014, clearly mentioned that there was no succour to the family from 2002 to 2010 for a period of eight years on account of the facts mentioned in the said judgment. For survival, one can do whatever is feasible. As such, the contention of the respondents that as the petitioners survived for all these years and there is no genuine need for employment to any member of the deceased employee and the family do not warrant grant of any appointment on compassionate grounds, is unsustainable, untenable and misconceived. This Court has to follow the judgment of the Hon'ble Apex Court in *Subhadra vs. Ministry of Coal and another*<sup>(ii)</sup>, wherein it is directed to consider the compassionate appointment to the son of the petitioner, after 15 years from the date of death of husband of the petitioner therein.

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(ii) (2018) 11 SCC 201



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21. The petitioners sought a declaration to declare Clause 21(iii) of the Instructions, 1993 as arbitrary and unreasonable and to set aside the same. The relevant portion of the said clause is extracted hereinunder:

*“21(iii) The relaxations shall be admissible only where none of the members of the family – spouse, son or unmarried daughter - is gainfully employed.”*

22. On a plain reading of the said clause, it appears that the respondents have prescribed such condition to give benefit of compassionate appointment to the really needy persons. If any one of the family member is already gainfully employed and he/she is financially supporting the family, the said family may not be in indigent condition due to the sudden demise of the breadwinner of the family. But, the respondents could not misinterpret the said clause without considering the factual position and reality. Some of the family members i.e., sons or daughters might have got married long back and they are living separately with their spouse and children and their earnings are sufficient to take care of his independent family. In such situation, it cannot be construed that he/she is financially supporting the other family members of the deceased person.



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23. This Court is very much conscious about the intention of the respondents in prescribing such clause to protect the interest of the dependants of the employee dying in harness and leaving his family in penury and without any means of livelihood. Though this Court is under the opinion that the respondents are misinterpreting Clause 21(iii) of the Instructions, 1993, taking into account the intention of the respondents in prescribing such condition, at present, this Court is not inclined to set aside the same and is proceeding with this case basing on the facts and circumstances of the case.

24. The main ground for rejection of the claim of the 1<sup>st</sup> petitioner is that the elder son is reported to have been working in a foreign country earning handsome salary. Basing on the investigation report, the respondents came to such a conclusion. On careful perusal of the order dated 18.02.2015 of the 1<sup>st</sup> respondent, it clearly proves that the said fact that the elder son of the 1<sup>st</sup> petitioner is working in a foreign country and earning handsome salary is revealed through the insurance policy particulars



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of the elder son. It is also clear that the respondents conducted enquiry/investigation behind the back of the petitioners. The petitioners are not provided an opportunity to participate in the enquiry or after arriving at such a conclusion against the petitioners' claim, the respondents did not choose to put the petitioners on notice.

25. It is not the case of the respondents that the elder son of the 1<sup>st</sup> petitioner is also living with the petitioners. The respondents did not conduct enquiry in a proper perspective to find out the bona fides of the petitioners. There is no any acceptable or cognizant evidence produced by the respondents to establish that the elder son of the 1<sup>st</sup> petitioner is living with the petitioners and he is supporting them financially after the demise of the breadwinner of the family. Even assuming that the elder son has been working on somewhere and earning handsome salary, even at that stage, the respondents ought to have examined the factual position whether he got married and he is living with his wife and children separately or he is financially supporting the petitioners after the sudden demise of the breadwinner of the family or not? Referring the policy particulars of him



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and arriving to a conclusion that he is working somewhere and earning handsome salary and coming to such conclusion behind the back of the petitioners, without any justification, in the considered opinion of this Court, is illegal, arbitrary, unjust and against to the principles of natural justice.

26. Learned Standing Counsel for the respondents has placed reliance on the judgment of the Hon'ble Apex Court in *Life Insurance Corporation of India v. Asha Ramchandra Ambekar (MRS) and another<sup>(i)</sup>*. This Court gone through the said judgment and there is no any dispute to this Court to the proposition of law laid down in the said judgment. But the facts of the present case are different.

27. The object of the scheme of compassionate appointment is a social security measure to help families of deceased employees. Under the scheme, one of the dependant family members of the deceased employee, who died in harness, is eligible for appointment to a job in the respondent-

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(i) (1994) 2 SCC 718



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Corporation. This Court is unable to accept the reason for rejection of the claim of the petitioners. In the opinion of this Court, if such claims are rejected on such unreasonable and untenable grounds, the very object of scheme of compassionate appointment to help the destitute families would be defeated.

28. In this regard, it is worthwhile to refer the case of **Balbir Kaur v. Steel Authority of India Limited<sup>(iii)</sup>** 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,*

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(iii)(2000) 6 SCC 493



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29. The Hon'ble Apex Court further held at para No. 19 as extracted hereunder:

*“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 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.”*

30. In this regard, it is worthwhile to refer the case in ***The Superintending Engineer v. V. Jaya<sup>(iv)</sup>***, wherein their Lordships comprising a Division Bench of Madras High Court have held at para No. 7 as extracted hereunder:

*“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*

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(iv)(2007) 6 Mad LJ 1011



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*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 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.”*

31. For the above mentioned reasons, this Court is of the considered opinion that the petitioner has made out a case to issue direction to the respondents to consider the claim of the petitioner seeking compassionate appointment without reference to the objection raised in the impugned orders. Further, in the considered opinion of this Court, the order of the 1<sup>st</sup> respondent in Ref: P&IR, dated 18.02.2015 and the consequent orders dated 25.03.2015 and 29.05.2015 of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are



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illegal, arbitrary, unjust and against to the principles of natural justice and as such, they are liable to be set aside.

32. Accordingly, this Writ Petition is allowed with the following directions:

- i. The order of the 1<sup>st</sup> respondent in Ref: P&IR, dated 18.02.2015 and the consequent orders dated 25.03.2015 and 29.05.2015 of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are set aside; and
- ii. The respondents are directed to consider the claim of the 2<sup>nd</sup> petitioner for appointment on compassionate grounds within a period of six weeks from the date of receipt of a copy of this order.

33. There shall be no order as to costs.

34. Consequently, connected miscellaneous petition is closed.

**10.11.2023**

**Note:** Issue order copy by 10.11.2023.

NCC : Yes/No

Index : Yes/No

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**BATTU DEVANAND, J.**

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To

1.The Divisional Manager,  
Life Insurance Corporation of India,  
Divisional Office,  
9A Punitha Vathyar Street,  
Palayamcottai, Tirunelveli-627002.

2.The Regional Manager,  
Life Insurance Corporation of India,  
Zonal Office,  
New No.153, Old No.102,  
LIC Building, Anna Salai,  
Chennai-600 002.

3.The Deputy Secretary,  
Life Insurance Corporation of India,  
Central Office, Nariman Point,  
Mumbai-21.

**Pre-delivery Order made in**  
**W.P.(MD) No.13033 of 2015**

**10.11.2023**