



W.P.(MD).No.21333 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.21333 of 2021

and

W.M.P(MD)Nos.17893 & 17894 of 2021

C.Irulayee

... Petitioner

Vs.

- 1.The Principal Director,
O/o. the Principal Director,
Highways Department,
(Construction and Maintenance),
No.76, Sarthar Patel Road,
Guindy, Chennai - 25.
- 2.The Chief Engineer,
Highways Department,
(Construction and Maintenance),
No.76, Sarthar Patel Road,
Guindy, Chennai - 25.
- 3.The Superintending Engineer
Highways Department,
(Construction and Maintenance),
Alagarkovil Salai,
Madurai - 2.
- 4.The Divisional Engineer,
Highways Department,
(Construction and Maintenance),
Sivagangai District.



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5.The Assistant Divisional Engineer,
Highways Department,
(Construction and Maintenance),
Manamadurai,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 13.01.2021 in Memo No.00250/Nir 1(2)/2020 on the file of the respondent No.1 and consequential impugned order in Ku.No.632/2021/A2 dated 11.06.2021 on the file of the respondent No.5 and quash the same as illegal and consequently directing the respondents to appoint the petitioner for any suitable post by considering her educational qualification on compassionate ground with the respondent No.5's office with all consequential benefits within the time stipulated by this Court.

For Petitioner	: Mr.V.Malaiyendran
For Respondents	: Mr.Veera Kathiravan Additional Advocate General Assisted by Mr.M.Prakash Additional Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order dated 13.01.2021 in Memo No.00250/Nir 1(2)/2020 on the file of the first



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respondent and consequential impugned order in Ku.No.632/2021/A2 dated 11.06.2021 on the file of the fifth respondent and consequently directing the respondents to appoint the petitioner for any suitable post by considering her educational qualification on compassionate ground in the fifth respondent office with all consequential benefits.

2.The petitioner's father was working as a road worker in the fifth respondent office and during his service he died on 08.10.2015 leaving behind her, her mother, her sisters and her grandmother as legal heirs. The petitioner made an application on 18.09.2018 seeking an appointment on compassionate grounds along with no objection certificate received from all the other legal heirs, dated 18.09.2018, in favour of the petitioner and sought for compassionate grounds along with the comprehensive certificate. On 02.11.2020, the fourth respondent sent a communication to the third respondent along with the petitioner's documents and on 08.12.2020, the third respondent also sent another communication to the second respondent for proper consideration. In the meanwhile, the first respondent passed the impugned order dated 13.01.2021 rejecting the application seeking appointment on compassionate grounds made by the petitioner on the ground that on the date of application made by



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the petitioner i.e., on 18.09.2018, the petitioner was only 17 years and 3 months.

3.In terms of G.O(MS)No.18, Labour and Employment (Q1) Department, dated 23.01.2020, any person who is making an application seeking an appointment on compassionate grounds ought to have completed a minimum age of 18 years. Since the petitioner did not attain the age of majority on the date of application, her application was rejected. In furtherance to that, the petitioner gave another representation on 03.06.2018. However, no action was taken. Thereafter, the petitioner made a similar representation on 21.05.2021. In view of the said representation, the fifth respondent issued a consequential impugned order dated 11.06.2021 rejecting the petitioner's application on the same ground.

4.Heard Mr.V.Malaiyendran, learned counsel appearing for the petitioner and Mr.Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents and anxiously perused the materials available on record.



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5.It is a settled proposition of law that seeking compassionate appointment cannot be a vested right for any applicant who is seeking on compassionate grounds. The competent authorities have rejected the petitioner's application on the basis of G.O(MS)No. 18, Labour and Employment (Q1) Department, dated 23.01.2020. However, later on, 08.03.2023, though the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2003 were implemented vide G.O.(Ms).No.33, Labour Welfare and Skill Development (Q1) Department, dated 08.03.2023, which has enlarged the scope of giving relief to the persons seeking compassionate appointment by relaxing the condition that the applicants should have completed the age of 18 years, the petitioner's application was made on 18.09.2018 when G.O(MS)No.18, Labour and Employment (Q1) Department, dated 23.01.2020 was in vogue. This issue has been settled by the Honourable Apex Court in ***Civil Appeal No.7752 of 2021 (The Secretary to Government Department of Education (Primary) and others Vs. Bheemesh alias Bheemappa, dated 16.12.2021)***, wherein it has clearly dealt with the scope of dealing with the application for compassionate appointment when a modified scheme with an enlarged relief or benefit has been implemented. The relevant portion of the said Judgment is extracted as follows:-



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"18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.

19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i)



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date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they



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will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.”

6. Whenever a new scheme has been implemented with an enlarged benefit for the purpose of reckoning the period of limitation of making an application seeking employment under compassionate grounds, it is for the competent authority to rely upon the older scheme with lesser benefit. In cases where the benefit under the existing scheme was taken away or substituted with a lesser benefit, always the Courts would be inclined to make use of the application of the new scheme. Hence, in cases, where the benefits under an existing scheme were enlarged by a modified scheme after the death of the



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employee, the Courts should rely upon that scheme which was in force on the date of death of the employee. As such, the hands of this Court are tied by the mandates of G.O(MS)No.18, Labour and Employment (Q1) Department, dated 23.01.2020 and that point of time, the minimum age for an applicant to avail an application for employment under compassionate ground is that, the applicant must have completed the age of majority. On the said ground, this Court is inclined to dismiss the Writ Petition.

7. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes
Index : Yes
Internet : Yes
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L.VICTORIA GOWRI, J.

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