



WP.No.14594 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2024

PRONOUNCED ON : 29.04.2024

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.14594 of 2011

M.Manikandan

...

Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai 600 003.

2.Zonal Officer – 5,
Corporation of Chennai,
183, Periyar E.V.R.salai,
Kilpauk, Chennai – 600 010.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the entire records leading to issuance of order dated 25.05.2011 passed by the 2nd respondent herein in Ma.Aa.5.Na.Ka.No.C1/8289/2010 and quash the same, further direct the respondents herein to appoint the petitioner in an appropriate/suitable job on compassionate ground in the Corporation of Chennai within a stipulated period.

For Petitioner : Mr.C.Uma Shankar
For Respondents : Mr.S.Gopinathan, Standing Counsel
for Greater Chennai Corporation



WP.No.14594 of 2011

ORDER

This Writ Petition has been filed to call for the entire records leading to issuance of order dated 25.05.2011, passed by the second respondent herein, in Ma.Aa.5.Na.Ka.No.C1/8289/2010 and quash the same, further direct the respondents herein to appoint the petitioner in an appropriate/suitable job on compassionate ground in the Corporation of Chennai within a stipulated period.

2.The case of the petitioner is that the petitioner was born on 31.10.1992 to his natural parents Mr.Mathi and Mrs.Selvi. He was given in adoption to his paternal uncle since he was unmarried and issueless when he was seven years old by virtue of a registered adoption deed, dated 10.03.1999. His adoptive father Mr.D.Moorthy died on 12.09.2001 while he was in service. The petitioner was nine years old and he was taken care of by his natural parents. Petitioner applied for retirement and other benefits. Petitioner's natural father was appointed as natural guardian in O.P.No.365 of 2004. Petitioner sought an appointment for a job in Corporation of Chennai on compassionate grounds. This was replied by the second respondent on 26.12.2005 stating that the compassionate ground appointment was temporarily stopped as per Government letter No.2683/Ma-3/2002-2, dated



WP.No.14594 of 2011

22.02.2002. Petitioner waited till he became major and again submitted his application by a letter dated 12.11.2010 for appointment on compassionate ground. His application was rejected stating that he submitted the application three years after his father's death. In the said circumstances, this petition is filed.

3.The learned counsel for the petitioner submitted that the petitioner was a minor when his adoptive father died. A minor cannot apply for any compassionate appointment. Therefore, after attaining majority, he submitted the application. The rejection of his application on the ground that the application was not filed within three years from the date of death of the adoptive father is not legal and appropriate. The earlier application for appointment on compassionate grounds was rejected on the ground that the appointment on compassionate grounds was temporarily stopped as per Government letter No.2683/Ma-3/2002-2, dated 22.02.2002 and not on any other grounds.

4.In support of his submissions, he pressed into service the following judgments:



WP.No.14594 of 2011

(i) Syed Khadim Hussain Vs. State of Bihar and others reported in (2006) 9

SCC 195. The relevant portion of the judgment is extracted under:

5. We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the h appellant submitted the application he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application.

6. As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In



WP.No.14594 of 2011

our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered c for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The appeal is disposed of in the above terms. No costs.

(ii) A.Musthfa Iqbal Basha Vs. State of Tamil Nadu reported in **(2011) 4**

MLJ 438. The relevant portion of the judgment is extracted under:

14. In view of the legal propositions laid down in the decisions referred to supra, this Court is of the opinion that the petitioner's claim for compassionate appointment cannot be denied and therefore, the impugned order dated 6.11.2009 passed by the 4th respondent is set aside. The respondents are directed to consider the claim of the petitioner for compassionate appointment without reference to the objection raised in the impugned order i.e., the petitioner has not applied within three years from the date of death of his



father, but taking into account the fact that the sudden death of his father has left his family in penury and without any means of livelihood, and pass appropriate orders within a period of two (2) months from the date of receipt of a copy of this order.

(iii)M.Uma Vs.Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai – 600 002 and another reported in **(2010) 7 MLJ 644**. The relevant portion of the judgment is extracted under:

10. In the light of the above judgments of the Supreme Court as well as the Division Bench judgments of this Court and having regard to the fact that the petitioner's application was rejected by order dated 26.2.2005 on the ground that she has not submitted the application within three years and the application was submitted by the petitioner's brother on 29.4.2002 and after the said rejection, the petitioner applied on 10.6.2002 and the proof of sending the application is filed in the typed set of papers and also the fact that the petitioner's family is still in indigent circumstances, I am of a firm view that the petitioner has made out a case to issue a



mandamus directing the respondents to consider the claim of the petitioner seeking compassionate appointment without reference to the objection raised in the impugned order i.e., the petitioner has not applied within three years from the date of the death of the petitioner's father. Necessary revised order is directed to be passed by the respondents within a period of three months from the date of receipt of a copy of this order. No Costs.

5.In reply, the learned counsel for the respondents submitted that the application for appointment on compassionate grounds should be made within a period of three years from the date of death of the Government servant. Compassionate appointment is not a matter of right. Compassionate appointments are made to tide over the immediate crisis taking into consideration the indigent circumstances of the family because of the sudden demise of the Government servant. There is no rule which requires that a minor child should be given appointment under the compassionate grounds after he attains majority. In support of his submissions, he pressed into service the following judgments:

(i) Local Administration Department & Another Vs.M.Selvanayagam @



WP.No.14594 of 2011

Kumaravelu reported in **CDJ 2011 SC 359**. The relevant portion of the

judgment is extracted under:

9. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments.

(ii) The Inspector General of Prisons, Tiruchirapalli District & Another

Vs. P.Marimuthu reported in **CDJ 2016 MHC 7141**. The relevant portion of the judgment is extracted under:



WEB COPY



WP.No.14594 of 2011

39. Thus, for the reasons stated supra, we are of the view that continuation of penury or indigent circumstances of the family, alone is not the factor to be considered by the department, while examining the request of an applicant for appointment on compassionate grounds. Reading of the Government orders shows that scheme can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

(iii) The General Manager, Chennai Metropolitan Water Supply & Sewerage Board, Chennai & Another Vs. The Chairman and Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, reported in CDJ 2022 MHC 8313. The relevant portion of the judgment is



extracted under:

WEB COPY

19.It would be relevant to note here few Judgments of the Hon'ble Supreme Court in this regard. In the case of State of Jammu & Kashmir and others v/s. Sajab Ahamed Mir reported in 2006 (5) SCC 766, it was held that the appointment on compassionate ground is an exception to general rule of appointment to public office which is based on competitive merits. The Hon'ble Supreme Court in the said Judgment dismissed the claim for compassionate appointment on the ground of delay and laches. The Hon'ble Supreme Court further held that there was no need to make appointment on compassionate grounds at the cost of interest of several others ignoring the mandate of [Article 14](#) of the Constitution of India, when it was proved that the family had overcome the crisis.

20.The Hon'ble Supreme Court in the case of Punjab State Power Corporation Limited and other Vs. Nirval Singh reported in 2019 6 SCC 774 has categorically held that the delay in pursuing the claim/approaching Court would militate against claim for compassionate appointment as the very objective is to provide immediate amelioration to the



WP.No.14594 of 2011

family. In the said case also the claim for compassionate appointment was rejected on the ground of delay.

21. In a more recent Judgment of the Hon'ble Supreme Court in the case of *Steel Authority of India Vs. Gouri Devi*, the Hon'ble Supreme Court has reiterated the above principles and rejected the application filed for compassionate appointment made after 18 years on the ground of delay and laches.

22. It is now fairly well settled that there is no vested right to compassionate appointment and such right cannot be exercised at the whim and fancy of the claimant. The claim for compassionate appointment is circumscribed by the scheme for compassionate appointment. It is also well settled that the object behind appointment on compassionate ground is to enable the family to tide over the sudden financial crisis into which it is pushed and not to provide employment on the mere death of the employee. Fruitful reference can be made to the Judgement of the Hon'ble Supreme Court of India in the case of *Umesh Kumar Nagpal Vs. State of*



WP.No.14594 of 2011

Haryana and others reported in (1994) 4 SCC 138 and to the case of Managing Director, MMTC Ltd., New Delhi and another Vs. Pramoda Dei alias Nayak reported in (1997) 11 Supreme Court Cases 390 in this regard.

(iv) A.Petchiselvi Vs. The Superintending Engineer, Tirunelveli, reported in **CDJ 2023 MHC 018.** The relevant portion of the judgment is extracted under:

"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 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



WP.No.14594 of 2011

taken note of in that case.”

WEB COPY

6.Considered the rival submissions and perused the records.

7.The fact that the petitioner was adopted by his adoptive father D.Moorthy, who was working as a Road Worker in Chennai Corporation is not in dispute. In fact the retirement and other benefits of the deceased was paid to the petitioner. It is seen from the communication dated 26.12.2005 that the Zonal Officer – 5, Chennai Corporation, informed the petitioner, with reference to the letter received from the Commissioner’s office, dated 15.12.2005 that the appointment under compassionate ground is stopped by the Government. Therefore, the petition was not considered. Even otherwise, petitioner could not have been considered for appointment under compassionate grounds for the reason that he was minor in 2005. He attained majority only in the year 2010, i.e., on 31.10.2010. Thus, the issue here is whether the petitioner can seek appointment on compassionate ground after attaining majority. There are divergent views on this issue. Thereby, it is necessary to discuss the judgments produced by the learned counsel appearing for the parties.



WP.No.14594 of 2011

8.No doubt that the Hon'ble Supreme Court in ***Local Administration Department & Another Vs. M.Selvanayagam @ Kumaravelu*** reported in ***CDJ 2011 SC 359*** observed that when the applicant was a minor aged 11 years at the time of his father's death and when the family had been able to tide over the first impact of his death, the claim of compassionate appointment will not come under the scheme of compassionate appointment. Similarly, the other judgments relied by the learned counsel for the respondents have also taken the view that the appointment on compassionate grounds is not a resource of recruitment, but a means to enable the family to get over the sudden financial crisis. The financial position of the family would be evaluated on the basis of the provisions contained in the scheme. The scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. The department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. The scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death of the deceased Government employee. This is one line of the judgment which decides against the compassionate appointment of the minor, after he attains majority. However, from the



WP.No.14594 of 2011

judgment produced by the learned counsel for the petitioner in ***Syed Khadim***

Hussain Vs. State of Bihar and others reported in (2006) 9 SCC 195, it was

held that when the application for compassionate appointment was submitted, the applicant was thirteen years old and that was rejected after six years without giving any reason. The applicant should have crossed 18 years when the application was rejected. Finding that there is no rule as to what should be done in case the dependants are minors and is there any relaxation of the age, in case they did not attain majority, within the prescribed period, the Hon'ble Supreme Court, in the peculiar circumstances of the case, directed the Government to give appointment to the applicant under compassionate grounds. In ***M.Uma Vs.Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai – 600 002 and another*** reported in (2010) 7 MLJ 644, the learned Single Judge of this Court, after considering several judgments on this point held that the application for appointment on compassionate grounds should not be rejected on the ground that it was filed after lapse of time. Similar view was taken in ***A.Musthfa Iqbal Basha Vs. State of Tamil Nadu*** reported in (2011) 4 MLJ 438, wherein, it was observed that the delay in submission of the application for compassionate appointment does not give an implication that the family of the deceased Government servant has gotten



WP.No.14594 of 2011

over their indigent circumstances. The rejection of the application for appointment on compassionate grounds on the ground of delay is unsustainable.

9.In the case before hand, even as per the letter of the Zonal Officer, dated 26.12.2006, the application for appointment was filed in 2005 when the petitioner was a minor. After attaining majority, an application was submitted seeking employment on compassionate grounds. It is no doubt that the appointment cannot be made in a Government service when a person is a minor. Petitioner's indigent circumstances is not disputed. Therefore, this Court is of the view that the rejection of the petitioner's representation for compassionate ground appointment in Ma.Aa.5.Na.Ka.No.C1/8289/2010, dated 25.05.2011 is not just and therefore, it is quashed. Consequently, the respondents are directed to consider the petitioner's representation and pass a favourable order giving him any suitable post under compassionate grounds. The order should be passed within three months from the date of receipt of a copy of this order.

10.Accordingly, this Writ Petition stands allowed. Consequently, connected Miscellaneous Petition, if any, is also closed. No costs.



WP.No.14594 of 2011

29.04.2024

sli

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai 600 003.

2.Zonal Officer – 5,
Corporation of Chennai,
183, Periyar E.V.R.salai,
Kilpauk, Chennai – 600 010.



WEB COPY



WP.No.14594 of 2011

G.CHANDRASEKHARAN, J.
sli

Pre-delivery Order in
W.P.No.14594 of 2011



WEB COPY



WP.No.14594 of 2011

29.04.2024