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W.P.No.30617 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.03.2024

Pronounced On : 27.03.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

W.P.No.30617 of 2008

B. Angappan

...Petitioner

Vs

1. The Chief Engineer
Highways and Rural Works Department
Miscellaneous
Chepauk
Chennai.

2. The Divisional Engineer
Highways and Rural Works Department
Villupuram.

3. The Assistant Divisional Engineer
Highways
Dindivanam.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records of the respondents, communicated by the second respondent to the third respondent pursuant to his proceedings made in Ku.No.C.No.1646/07/Aaa5 dated 22.08.2008 and as informed enclosing the original documents by the third respondent pursuant to his proceedings made in Ku.No.542/2008/Aa2/dated



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12.09.2008 and quash the same as null and void and consequently, direct the respondents to appoint the petitioner as 'Gang Mazdoor' in the available vacancies with retrospective effect from 01.06.2007, the date of receipt of application along with all original documents with compensatory costs.

For petitioner : Ms.S.Swetha
for Mr.A.Amal Raj
For respondents : R.U.Dinesh Kumar
Additional Government Pleader

ORDER

This writ petition has been filed to quash the order dated 22.08.2008 passed by the second respondent and consequently, direct the respondents to appoint the petitioner as 'Gang Mazdoor' in the available vacancies with retrospective effect from 01.06.2007, the date of receipt of application along with all original documents with compensatory costs.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner's father by name Balakrishnan was working as a 'Gang Mazdoor' in the respondent office. On 09.01.1991, the petitioner's father



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died in harness leaving behind the petitioner, his mother and his sister. At the time of death of his father, the petitioner was eight years old. There was no source of income to meet out their family expenses.

2.2. The petitioner's mother submitted an application to the second respondent to provide compassionate appointment to the petitioner. But the same was returned with a direction to submit the application once the petitioner attains majority. When the petitioner was 16 years old, the petitioner has submitted another application on 25.08.1999 through his mother. The third respondent issued proceedings dated 07.12.1999 asking the petitioner to submit all his records before the office of the third respondent. This application and documents were kept pending until he attained the age of majority. The petitioner submitted repeated representations explaining his extreme poverty. The respondent, has issued a proceedings dated 31.08.2006, rejecting the application of the petitioner on the ground of delay.

2.3 On 01.06.2007, the petitioner has once again submitted the application for the post of 'Gang Mazdoor' before the first respondent, but the same was rejected on the ground that the petitioner has submitted the application



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after seventeen years from the date of death of his father. Being aggrieved by the same, the petitioner has come forward with the instant writ petition.

3. The Assistant Divisional Engineer, Highways, Tindivanam, has filed a counter affidavit stating that during 1991, there was no scheme of compassionate appointments and that the petitioner has filed the first application before the District Collector on 8/3/2006, i.e., after seventeen years of his father's death, thereby, the petitioner is not eligible for appointment on compassionate grounds.

4. Heard both sides and perused the materials available on record.

5. The compassionate appointment cannot be claimed as a matter of right. It is the policy of the Government to appoint children of the deceased employees on certain conditions in order to provide immediate social and final security to the family of the Government servant who dies in harness. However, if there is inordinate delay in filing of the application for compassionate appointment, it would defeat the very purpose for which the



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policy of compassionate appointment has been created. After the lapse of 23 long years, the petitioner cannot obviously contend that there is an imminent necessity for appointing him on compassionate ground. It is vehemently submitted by the learned counsel for the petitioner that the impugned orders passed by the respondents are erroneous as the petitioner has approached the respondent department seeking employment on compassionate ground within a period of three years from the date of death of his father and only on the advice of the respondent department, the petitioner has again reiterated his request after crossing the age of 16 years and again after attaining majority, and hence, there is no delay in filing the application.

6. It is true that the petitioner has consistently made efforts to get compassionate appointment until he attained majority. The petitioner was not given employment within three years from the date of death of his father as he was a minor. While rejecting the submission of the petitioner by way of the impugned order, the respondent stated that the request of the petitioner cannot be considered as there is an enormous delay.



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7. It is the case of the petitioner that there was no policy prior to the year 1995 to file an application seeking compassionate employment within a specific period of time. However, in the year 1995, Government Orders have been issued stating that any application for compassionate appointment has to be filed within a period of three years from the date of death of the deceased employee. If an application is filed within the period of limitation, then, the department can examine as to the eligibility of the applicant in respect of age, educational qualification and other parameters requires for appointment and then consider the request.

8. Even if there is no time limitation within which an application for compassionate appointment has to be filed in respect of death that occurred prior to the year 1995, still, such an application has to be filed within a reasonable time and application for compassionate appointment cannot be permitted to be filed after a long lapse of time. Therefore, even though the petitioner has been making attempts for getting employment, on account of the fact that he attained majority after a lapse of many years of the death of his father, the request of the petitioner was rightly turned down by the respondents.



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9. As per G.O.(MS).No.120 Labour and Employment Department, dated 26.06.1995, the Government has imposed a condition that application for compassionate appointment has to be made within three years from the date of death of the Government employee. While interpreting the said Government Order, this Court, in the judgment dated 23.06.2006 in W.P.No.32212 of 2002, has held that a limitation period of three years for making application seeking compassionate appointment does not apply to the petitioner therein, whose father died on 06.08.1988, if this interpretation is accepted, certainly the petitioner case can be considered.

10. However, the learned Additional Government Pleader submitted copy of the letter dated 08.10.2007 addressed to the Principal Secretaries, stating that the limitation of three years for filing of application from the date of death of a Government servant is applicable to all the cases including the cases where the Government servant died prior to 26.06.1995. Therefore, the Government has clarified that there is a limitation of three years for filing application seeking compassionate appointment even to the cases prior to the year 1995, viz., prior to issuance of G.O.(MS).No.120 Labour and Employment



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Department, dated 26.06.1995. The clarification was issued subsequent to the judgment of this Court in W.P.No.322212 of 2002 dated 23.06.2006.

11. The learned counsel for the petitioner has relied upon the judgment of this Court dated **25.08.20221** in **W.P.No.31311 of 2017** and the relevant portion is extracted hereunder:

"6. Admittedly, at the time of the death of the petitioner's husband on 03.10.1994, there was no uniform policy which was adopted by the respondents for appointment on compassionate ground. G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 was passed a few months after the death of the petitioner's husband. However, that G.O has not been given serious consideration by the respondent/Board in as much as the <https://www.mhc.tn.gov.in/judis/> petitioner has been able to demonstrate that several persons' applications were much later and beyond three years limitation prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 and they have given appointment by the respondents. The respondents cannot discriminate by resorting to pick and choose method in the matter of appointment on compassionate ground also."



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11.1. The learned counsel for the petitioner further placed reliance on the judgment of this Court in ***R.Kothandan Vs. State of Tamil Nadu and Ors***, reported in ***MANU/TN/3090/2021***, has been quoted:

"10. Irrespective of the submissions made on either side, we find that the writ petitioner's second application dated 22.05.2006 was entertained by the respondents and he was assigned with waiting list No.585-A. This was not disputed by the appellants. The appellant legitimately expected that he will be given an appointment under compassionate grounds when his second application was entertained and a waiting list number was allotted. Having accepted the second application of the appellant/writ petitioner and assigned waiting list number, the appellants, instead of appointing the appellant/writ petitioner as Junior Assistant have also explored the possibility of accommodating and/or offering the post of SalaiPaniyalar to the appellant/writ petitioner. While so, it is not now open to the respondents to turn around and say that the appellant had submitted his application belatedly."

12. The learned Additional Government Pleader has filed G.O.(Ms).No.33 Labour Welfare and Skill Development (Q1) Department, dated 08.03.2023, to show that the Government has adopted a new policy in respect of



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compassionate appointment, wherein, it is stated as follows:

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“5. Every application for appointment under these rules shall be made within a period of three years from the date of death of the Government servant or from the date of retirement on medical invalidation or from the date of receipt of Court order declaring the missing Government servant as dead, under Sections 107 or 108 of the Indian Evidence Act, 1972 (Central Act I of 1872).”

12.2. The learned Additional Government Pleader has further placed reliance judgment of the Hon'ble Supreme Court in ***Fertilizers and Chemicals Travancore Ltd., & Ors., Vs Anusree K.B***, reported in ***2022 Live law (SC) 819*** , the relevant portion of which is extracted as under:

“9.1. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the Respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the Respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is



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provided."

9.2. Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the Appellants to reconsider the case of the Respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.

12.3. The learned Additional Government Pleader has cited another judgment of the apex Court in ***The State of West Bengal vs. Debabrata Tiwari & others***, reported in ***2023 Livelaw (SC) 175***, the relevant portion of which is extracted below:

"7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis. ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not



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deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source. "

12.4. The learned Additional Government Pleader has cited judgment in ***MGB Gramin Bank vs. Chakrawarti Singh***, reported in **2013 STPL (web) 623 SC**, the relevant portion of which runs as below:

"13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not



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create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr.(supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

13. The learned Additional Government Pleader has placed reliance on a Full Bench judgment of this Court in ***W.P.(MD) Nos.7016 of 2011 and batch*** by judgment dated 11.03.2020 and the relevant portion is extracted hereunder:

"10. The narration of the above mentioned Government orders would show that there have been different schemes at different part of time. It is again well settled that the scheme available on the date of death of the Government employee has to be applied and not any scheme which has been framed after the cause of action has arisen. A perusal of the orders would show that after 1995, all the schemes provide that an application for appointment on compassionate basis has to be made within a period of three years from the date of death of the deceased employee.

30. As stated earlier, if the policy is to ensure an immediate indigence of the family to be taken care of, then application will not serve the purpose. However, it is pertinent to mention that in cases where the employee has passed away prior to 1995, then the employer has to consider the application on the facts of each case and after taking into account the indigent circumstances in



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which the family is placed. The Electricity Board also has to consider the applications on the basis of the schemes which were prevalent on the date of the death of the employee.

The board cannot apply a subsequent scheme and has to apply the scheme which was applicable on the date of the death of the employee."

13.1. The learned Additional Government Pleader has also placed reliance on a Division Bench judgment of this Court in ***V.Deepika vs. The District Collector, Office of the District Collector, Ramanathapuram District***, in ***W.A.(MD)No.682 of 2022*** , dated ***08.07.2022***, the relevant portion of which is extracted hereunder:

"9. The appellant is seeking compassionate appointment by stating that he had applied within three years after attaining majority. The appellant's father died on 29.10.2014, the appellant attained majority on 04.12.2017. The appellant's three years period from the date of death is on 28.10.2017. The appellant's mother had applied for compassionate appoinement to her minor daughter on 15.05.2015, but as on the date of application the appellant was a minor and has no necessary qualification and hence the claim of compassionate appoinement was rejected. The Hon'ble Full Bench of this Court in W.P.(MD) Nos.7016 of 2011 and batch by judgement dated 11.03.2020, has held that the scheme does not permit entertaining an application by a dependent after attaining majority, hence the period of



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limitation ought to be considered from the death alone and not from the date of attaining majority. Therefore, this Court following the judgement of the Hon'ble Full Bench and the principles laid down by the Hon'ble Supreme Court in several cases, is of the considered opinion that the appellant's claim cannot be considered for three years period ought to be considered from the date of death of the deceased employee. In this case, on the date of the death of the deceased employee, the petitioner was a minor and she became major after 3 years. Unless there is scope for relaxing the rules, the application for compassionate appointment is liable to be rejected. The learned Single Judge has rightly rejected the claim of the appellant and the appellant has not made out any case and the writ appeal is liable to be dismissed."

14. On perusal of the above citations and judgments and on perusal of various Government Orders issued from time to time, it is clear that there is limitation for seeking compassionate appointment and hence, the request of the petitioner to appoint him in the post of 'Gang Mazdor' in the available vacancies with retrospective effect from 01.06.2007 cannot be considered.

15. In view of the above discussions, this writ petition is dismissed.

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Index : Yes/No
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Citation : Yes/No

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Pre-delivery order made in
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