



W.P. No.6917 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.6917 of 2020
and
W.M.P.No.8255 of 2020

E.Nagamanickam

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Social Welfare Department,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Social Welfare,
Social Welfare Department,
No.1, Panagal Maligai Building,
2nd Floor, Jeenis Road,
Saidapet, Chennai – 600 015.
- 3.The Director of Social Welfare,
Social Welfare Department,
Chepauk, Chennai – 600 005.
- 4.The District Collector,
Namakkal District,
Namakkal – 637 003.



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5.The District Social Welfare,
District Social Welfare Office,
Collectorate Complex,
2nd Floor, Tiruchengodu Road,
Namakkal District – 637 003.

6.The Tahsildar,
Bhavani Taluk,
Erode District – 638 301.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent order dated 16.12.2019 passed in Na.Ka.No.7420/NEER 4(3)/2014 and quash the same and consequently direct the respondents to appoint the petitioner herein in any suitable post on compassionate ground in the Social Welfare Department with all monetary and service benefits.

For Petitioner : M/s.M.Rajsekhar.

For Respondents : Ms.E.Ranganayaki
Additional Government Pleader.

ORDER

The father of the petitioner, while working as Junior Assistant in the office of the 5th respondent died on 27.11.2009 due to Chest pain. It is thereafter the petitioner herein submitted an application on 01.03.2010



seeking compassionate appointment consequent upon the death of his father.

By the date of submission of that application, the petitioner was aged 15 years 4 months and 12 days. It is thereafter the petitioner completed his SSLC in the month of March 2011. Thereafter, the claim of the petitioner for compassionate appointment was considered by the 2nd respondent and the same was rejected by the impugned order dated 16.12.2019 on twin grounds. Firstly on the ground that the petitioner was aged 15 years 4 months 12 days only, as on the date of submission of application on 01.03.2010 and also on the ground that the petitioner did not possess the qualification of SSLC as on the date of submission of application on 01.03.2010. It is aggrieved by the said order dated 16.12.2019, the petitioner filed the present writ petition.

2. The learned counsel for the petitioner brought to the notice of this Court, the Government order vide G.O.Ms.No.120 Labour and Employment department dated 26.06.1995 and contended that the application for appointment on compassionate ground can be made within a period of three years from the date of death of the Government servant and the petitioner has submitted the application within time. He also further



contended that, by the date of consideration of the application submitted by the petitioner, the petitioner has already completed the age of 18 years and also acquired qualification of SSLC and as such, the action of the respondents, in taking into consideration the date of submission of his application for the purpose of considering eligibility and suitability for compassionate appointment is totally arbitrary and the respondents ought to have taken into consideration the age and qualification possessed by the petitioner as on the date of consideration of his application for the compassionate appointment in the year 2019. Thus, he contended that the impugned order is liable to be set aside for want of considering the case of the petitioner, as he is entitled on the date of considering his application in the year 2019.

3. Though 5th respondent filed a detailed counter affidavit, the same is nothing but reiterating the reasons assigned in the impugned order. However, the learned Government Advocate placed reliance on various orders passed by this Court to say that the appointment on compassionate ground cannot be claimed as a matter of right and it is only under certain



circumstances, as a matter of concession, the same is being extended in favour of the persons who are in need of such immediate employment to provide livelihood to the family of the deceased employee.

4. This Court has carefully considered the submissions made on either side and also perused the material on record.

5. There is no dispute that the appointment on compassionate ground cannot be claimed as a matter of right, and it is only a matter of concession extended by the State while exempting the provisos contained in Article 16 of the Constitution of India. It is only in case if the family of the deceased Government servant is in need of any such compassionate appointment and they are totally dependent upon the income of the deceased Government servant, the same could be considered for compassionate appointment.

6. As seen from the impugned order, the claim of the petitioner was rejected by passing the impugned order not on the ground that the petitioner



and the family of the deceased Government servant are not in need of the employment for the livelihood but it is only on the ground that the petitioner has not attained the age of 18 years as on the date of submission of application and he did not possess requisite qualification as on the date of submission of application. Therefore, it is necessary and then it is incumbent upon this Court to examine the grounds on which the impugned order came to be passed, are sustainable under law or not.

7. As seen from G.O.Ms.No.120 dated 26.05.1995, an application seeking compassionate appointment can be submitted within a period of three years from the date of death of Government servant. In the instant case, the father of the petitioner died on 27.11.2009. Therefore, the petitioner herein, being the son of the deceased Government servant is entitled to submit an application seeking compassionate appointment on or before 26.11.2012. In the instant case, the petitioner has admittedly submitted his application on 01.03.2010, though he was aged only 15 years 4 months 12 days as on the date of submission of said application. The said application was pending for considerable time before the respondents. Meanwhile, the petitioner has



completed the age of 18 years before 26.11.2012 and he also passed SSLC examination in the month of March 2011 itself.

8. If the petitioner is entitled to submit application for compassionate appointment on or before 26.11.2012 and he has acquired requisite qualification for such compassionate appointment and also crossed the minimum age limit before 26.11.2012 and when the application submitted by the petitioner was already pending, the action of the respondents in rejecting the application of the petitioner on the ground that he has not attained the minimum age limit and not acquired requisite qualification as on the date of submission of application on 01.03.2010 cannot be sustained. If the petitioner is entitled to submit his application on or before 26.11.2012, by which date, the petitioner has attained minimum age of 18 years and also acquired qualification of SSLC, he was very much entitled to submit his application on that date. Hence, the application already submitted and pending, ought have been considered an application submitted on attaining the age of 18 years, while considering the same. The grounds on which the impugned order came to be passed cannot be said to be sustainable grounds.



As both grounds on which the impugned order came to be passed are found to be unsustainable, the impugned order cannot be sustained under law.

9. The very scheme of compassionate appointment is to provide immediate relief to the dependents of deceased Government servant and therefore the application submitted seeking such concession has to be considered with a positive attitude to extend such benefit to the dependents of the deceased Government servant. Unfortunately, in the instant case, though the application was submitted on 01.03.2010, the petitioner has acquired requisite qualification and also completed minimum age prescribed under the Rules as early as in the year 2011, the application was kept pending till the year 2019 and the same was rejected by the respondents on unsustainable ground by passing the impugned order.

10. This Court also considered the same aspect in the decision reported in 2007 6 MLJ 1011 in the case of ***The Superintending Engineer Vs. V.Jaya*** and held as under:

“7. However, in case of request for appointment on compassionate ground, however, the Court, while



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exercising its jurisdiction under Article 226 of the Constitution of India, cannot ignore the very purpose of providing employment on compassionate ground to the 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.”

11. In the light of the above, though there is long lapse of time since the date of death of the deceased Government servant and the petitioner also reached age of about 29 years, this Court, taking into consideration that the benefit of beneficial scheme of the Government being delayed and denied in an arbitrary manner by the respondents, is inclined to issue a positive



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direction directing the respondents to consider the claim of the petitioner for being appointed on compassionate ground in a suitable posts.

12. Accordingly, the impugned order is set aside and the 2nd respondent is directed to appoint the petitioner in a suitable post on compassionate grounds consequent upon the death of his father namely P.Elangovan, who died on 27.11.2009 and the respondent is further directed to comply with this order within a period of twelve (12) weeks from the date of the receipt of a copy of this order. Accordingly, the writ petition is allowed and the connected miscellaneous petitions, if any shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No

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