



W.P.No.20656 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 24.11.2023

PRONOUNCED ON : 15.04.2024

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

W.P. No.20656 of 2014

and

MP No.1 of 2014

K.Kalaiarasan

..Petitioner

vs.

1. The Chief Engineer,
Public Works Department,
Chepauk,
Chepauk-600 005

2. The Executive Engineer,(PWD),
Keezh Pennairu Basin Division,
Villupuram.

3. The Assistant Executive Engineer(PWD),
Keezh Pennairu Basin Division,
Thirukovilur,
Villupuram District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent herein in his proceedings in Ka.No.695/2013/U Se Po dated 12.03.2014 and quash the same and consequently direct the respondents herein to give appointment to the



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petitioner on compassionate ground based upon the petitioner's qualification.

For Petitioner : Mr.M.Velmurugan for
Mr.K.Hemarajan
For Respondents : Mr.C.Sangamithirai, Spl.G.P

ORDER

This Writ Petition has been filed seeking for issuance of a a Writ of Certiorarified Mandamus, to call for the records of the third respondent herein in his proceedings in Ka.No.695/2013/U Se Po dated 12.03.2014 and quash the same and consequently direct the respondents herein to give appointment to the petitioner on compassionate ground based upon the petitioner's qualification.

2. The brief facts of the case as narrated in the affidavit filed in support of the Writ Petition, are stated below:

2.1. The petitioner's father, one Mr.Krishnamurthy, while working as Work Inspector in the Office of the third respondent, died in harness on 22.12.1989 leaving his wife, mother, two sons including the present petitioner and a daughter. After demise of his father, the



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petitioner's mother made an application in the year 1990 to the respondents to provide compassionate appointment to her elder son namely K.Ranjith. But the application was not considered since the said incumbent K.Ranjith was a minor. Later on attaining the majority by K.Ranjith, again the mother of the petitioner made an application on 06.11.1998 to the respondents for compassionate appointment and the second respondent vide proceedings dated 14.11.1998 recommended for compassionate appointment to the said Ranjith. However, since there was a ban, no appointment was made. Later the second respondent vide his proceedings dated 07.06.2010, rejected the application, which was challenged by the said incumbent K.Ranjith in WP.No.14243 of 2010 before this Court. However, during the pendency of the said Writ Petition, the said K.Ranjith, died on 22.04.2013 and the said Writ Petition became infructuous.

2.2. After the demise of the said K.Ranjith, who is none other than the elder brother of the petitioner herein, the petitioner made a representation to the second respondent on 03.06.2013, seeking for compassionate appointment. As no response was forthcoming, the petitioner filed a Writ Petition in WP.No.28061 of 2013 which came to



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be disposed of by this Court vide order dated 09.10.2013, directing the third respondent to consider and pass orders on the representation made by the petitioner dated 03.06.2013. By proceedings dated 12.03.2014, the third respondent rejected the claim of the petitioner. Aggrieved by the same, the petitioner has come forward with the present Writ Petition.

3. A detailed counter affidavit has been filed on behalf of the third respondent, wherein it has been stated that after the demise of the father of the petitioner, his elder son Mr.K.Ranjith made an application on 15.04.1996, seeking appointment on compassionate grounds, which came to be rejected by the first respondent on the ground that the application was not made within the prescribed time limit of 3 years and also the said individual K.Ranjith had not completed 18 years of age. Again after the demise of K.Ranjith, the petitioner made a representation and in pursuant to the orders of this Court in WP No.28061 of 2013, the representation of the petitioner dated 03.06.2013 was duly considered by the third respondent and the same was rejected vide order dated 12.03.2014 for the same reason that the application was not made within 3 years from the date of death of the Government servant and also he had not completed 18 years of age, as instructed in G.O.Ms.No.202, Labour



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and Employment Department dated 08.10.2007. Therefore, the petitioner is not entitled to seek employment on compassionate grounds contrary to the above said Government Order and hence, it is prayed to dismiss the Writ Petition.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the record.

5. The compassionate appointment cannot be claimed as a matter of right. If there is inordinate delay in providing compassionate appointment, irrespective of the reasons, the delay would defeat the very purpose for which the policy of providing compassionate appointment has been evolved.

6. In the case on hand, the petitioner's father died in the year 1989. After the lapse of these many years, the petitioner cannot contend that there is an imminent necessity for appointing him on compassionate grounds. As on the date of death of the petitioner's father in the year 1989, the petitioner was a minor. The petitioner's mother, on behalf of



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the petitioner, submitted an application to the respondents for providing employment to the petitioner on compassionate ground. The authorities of the respondents have advised them to approach the respondents after the petitioner attains majority. After attaining majority, the petitioner has approached the respondent authorities. However, they have declined to consider his request on the ground that there was a huge delay in filing the application seeking employment on compassionate ground.

7. It is vehemently submitted by the learned counsel for the petitioner that the impugned orders passed by the respondents are erroneous and 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 attaining majority, and hence, there is no delay in filing the application.

8. 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



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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 enormous delay.

9. 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. It is true that for the first time in the year 1995, Government Orders have been passed 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.

10. The relevant portion of judgment of this Court dated **25.08.2022** in **W.P.No.31311 of 2017** 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



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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."

10.1. In the judgment of this Court in ***R.Kothandan Vs. State of Tamil Nadu and Ors***, reported in ***MANU/TN/3090/2021***, it has been held that:

"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



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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."

11. As per the G.O.(Ms).No.33 Labour Welfare and Skill Development (Q1) Department, dated 08.03.2023, the Government has adopted a new policy in respect of compassionate appointment, wherein, it is stated as follows:

"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).

11.1 As per the judgment of this Court in ***A. Mustafa Iqbal Basha vs. State of Tamil Nadu, rep. By its Secretary to the Government, Education Department and others***, as reported in (2011) 4 ***MLJ 438***, it is observed as follows:

"9. It is true, as contended by the learned Government Advocate, that the objective of providing compassionate appointment is to tide over the sudden indigent circumstances unexpectedly created by the sudden death of the



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Government Servant. As the petitioner was a minor at the time of the death of his father and at the same time his mother was also not eligible for appointment, he could not submit any application for compassionate appointment. Instead, he, immediately after attaining majority, submitted an application to the respondents. Just because there is a delay in submitting the application for the said reason by the petitioner for compassionate appointment, it cannot be said that the family of the deceased Government servant has got over the indigent circumstances. It is seen from the records that the two sisters of the petitioner are married and the brother is living separately. Now, the persons left out in the family are the petitioner and his mother, who are without any job and in every need of employment. In the given situation, it is very difficult for them to get two square meals a day. Therefore, I am of the considered opinion that the family of the deceased government servant cannot be left in lurch."

11.2. In ***Fertilizers and Chemicals Travancore Ltd., & Ors., Vs***

Anusree K.B, reported in ***2022 Live law (SC) 819*** , the Hon'ble Supreme

Court of India has observed 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



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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 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.

11.3. In another judgment between ***The State of West Bengal vs. Debabrata Tiwari & others***, as reported in ***2023 Livelaw (SC) 175***, the Hon'ble Supreme Court has held that :

"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 deprived of the



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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. "

11.4. In ***MGB Gramin Bank vs. Chakrawarti Singh***, reported in ***2013 STPL (web) 623 SC***, the Hon'ble Supreme Court has held 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 create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme



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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."

11.5. In W.A. (MD) No.737 of 2013 reported in **2013 SCC**

Online Mad 2146, this Court has observed as below:

"12.

After analyzing the above said case laws, it was held that within 3 years of death of her husband, when the widow applied for appointment on compassionate ground, and due to bar of age etc., when she could not be appointed and the request for appointment has been followed by her son/daughter, who have then not attained majority and subsequently, applied three years of their attaining majority, the request could be considered as continuation of their mother's application and the application given by him/her during the minority also could be considered as continuation of such earlier application and it cannot be denied on the ground that the application has been presented beyond 3 years of death of the father. It is not the case of the respondents that the family of the appellant is not in indigent status as on today."

12. As per the Full Bench judgment of this Court in **W.P.(MD)**

Nos.7016 of 2011 and batch dated 11.03.2020 and it is observed

hereunder:



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"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 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."

12.1. As per the 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***, it is held that:



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"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 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 appoinement 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."



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13. The purpose of providing compassionate appointment to the dependents of the deceased employee is to see that on account of sudden death of an earning family member, the source of income is not lost and thereby, it does not become difficult for the family members of the deceased to make out their livelihood. That is the reason while giving compassionate appointment to one of the family members, an undertaking will be taken from him to the effect that he will take care of the rest of the dependents of the deceased properly.

14. 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. As per G.O.(MS).No.120 Labour and Employment Department, dated



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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.

15. From a perusal of various Government Orders issued from time to time and on considering the law laid down by the Hon'ble Supreme Court of India, the request of the petitioner to provide him appointment on compassionate grounds cannot be considered.

16. Accordingly, this writ petition is dismissed. Connected M.P.is closed. No costs.

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vca

Index : Yes/No

Speaking order: Yes/No



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Dr.D. NAGARJUN, J

vca

To

1.The Chief Engineer,
Public Works Department,
Chepauk,
Chepauk-600 005

2.The Executive Engineer,(PWD),
Keezh Pennairu Basin Division,
Villupuram.

3.The Assistant Executive Engineer(PWD),
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**Pre Delivery order made in
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