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W.A.No.2431 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

W.A.No.2431 of 2023

Mrs.R.Vanitha

... Appellant

Vs.

1.The State of Tamil Nadu,
Rep. by the Home Secretary to the Government,
Secretariat, Chennai - 600 009.

2.The Director General of Police,
Dr.Radhakrishnan Salai Road,
Mylapore, Chennai.
Tamil Nadu - 600 004.

3.The Commissioner of Police,
Huzur Road, Coimbatore,
Tamil Nadu - 641 018.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.03.2022 passed by the learned Judge in W.P.No.17539 of 2020.

For Appellant

: Mr.A.Bobblie

For Respondents

: Mr.P.Kumaresan

Additional Advocate General

assisted by Mrs.S.Anitha

Special Government Pleader



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JUDGMENT

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(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal has been filed against the order passed by the learned Judge in W.P.No.17539 of 2020 on 23.03.2022.

2. The necessary facts leading to the filing of this writ appeal, are as follows:

2.1. The appellant's father C.Ruthrappan, while working as a Grade II Police Constable in B-9 Saravanampatty Law & Order Police Station, died in harness on 30.06.2004, leaving behind his wife, son and daughter /appellant herein as his legal heirs. Within the prescribed period, the brother of the appellant R.Sathish had made an application on 28.12.2004 seeking appointment on compassionate ground. The said application was considered and his name was included in the waiting list for appointment as Junior Assistant / Typist. Subsequently, *vide* memorandum dated 22.09.2007, the appellant's brother was called upon to appear before the selection committee for verification of educational qualification and physical requirements, for the purpose of recruitment. However, nothing progressed.

2.2. While so, before getting appointment, he died on 03.12.2013 due to heart attack. Immediately, the appellant made an application dated 13.01.2014 to consider her name, instead of her brother, whose name was maintaining in the



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waiting list for appointment on compassionate ground. She also submitted all the required documents in support of her claim. However, the third respondent *vide* order dated 19.03.2020 rejected the claim of the appellant on the ground that the application filed by the appellant is beyond the period of three years from the date of death of the deceased Government servant and hence, it is barred by limitation as per the Government Order in vogue.

2.3. Feeling aggrieved, the appellant preferred the writ petition in WP.No.17539 of 2020 seeking to issue a certiorarified mandamus calling for the records of the third respondent in respect of the order in Na.Ka.Enn.01/9474/2018 dated 19.03.2020, quash the same and consequently, direct the respondents to consider her requisition dated 13.01.2014 and its due compliance in accordance with law.

2.4. Upon hearing both sides, the learned Judge by order dated 23.03.2022, which is impugned herein, dismissed the above said writ petition, by observing that the claim of the appellant is beyond the prescribed period of three years and hence, the same cannot be entertained.

2.5. Challenging the order of the learned Judge, the appellant / writ petitioner is before this court with the present writ appeal.

3. The learned counsel for the appellant submitted that the appellant's brother applied for a compassionate appointment on 28.12.2004, after the death



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of his father and the same was taken on record and included in the waiting list for appointment as Junior Assistant / Typist. That apart, *vide* communication dated 22.09.2007, he was directed to attend the selection process for recruitment as Grade II Police Constables from among the candidates in the waiting list for appointment as Junior Assistant / Typist; and accordingly, he appeared before the selection committee at Police Training College Ground, Ashok Nagar, Chennai – 83. In the mean while, before getting appointment, he died on 03.12.2013 and hence, the appellant made application on 13.01.2014, seeking compassionate appointment to her, instead of her brother. Without properly appreciating the claim of the appellant, the third respondent erred in rejecting the same as it is time barred. According to the learned counsel, there is no dispute that the appellant's brother submitted his application within the limitation period and the same was kept in the waiting list and therefore, the application of the appellant should be treated as in continuation of the application submitted by her brother seeking compassionate appointment and she ought to have been considered for appointment. That apart, the family of the appellant is still in indigent circumstances. However, the learned Judge dismissed the writ petition, affirming the rejection order passed by the third respondent by the order impugned herein, which is arbitrary, illegal and contrary to the scheme. Hence, the learned counsel sought to set aside the order of the learned Judge and thereby allow this writ appeal.



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4. Per contra, the learned Additional Advocate General appearing for the respondents submitted that the compassionate appointment is primarily aimed at providing immediate relief to the family of the deceased employee to get over the financial crisis occurred on account of the death of the sole breadwinner, and the same cannot be stretched beyond the reasonable period. It is also submitted that in the Government Order prevailing at the relevant point of time, there is no provision for considering the application of an alternate legal heir and hence, the application filed by the appellant, beyond the period of three years from the date of death of the Government servant, was rejected by the third respondent, which was rightly confirmed by the learned Judge, by the order impugned herein and hence, there is no requirement to interfere with the same.

5. Heard the submissions made by the learned counsel on either side and also perused the materials available on record.

6. There is no dispute that the father of the appellant died on 30.06.2004, while he was in service; and the brother of the appellant submitted application for compassionate appointment on 28.12.2004 (i.e.) within the stipulated period of three years from the date of death of the Government servant. It is evident from the communications of the respondent authorities dated 22.09.2007 and 07.01.2008 that the application of the appellant's brother was taken on record



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and existed in the waiting list as sl.no.1029 for appointment as Junior Assistant / Typist. It is also not in dispute that before getting appointment, the appellant's brother died on 03.12.2013 and he was unmarried at that time and that, immediately thereafter, the appellant made application on 13.01.2014 seeking compassionate appointment in the place of her brother, whose name was kept in the waiting list maintained by the respondent authorities. However, the respondent authorities rejected the claim of the appellant by order dated 19.03.2020 stating that the application seeking compassionate appointment was filed beyond the period of three years from the date of death of her father, which was also affirmed by the learned Judge.

7. It is the specific contention of the learned counsel for the appellant that the application submitted by the appellant is in continuation of the application submitted by her brother, which was kept in the waiting list till he passed away; the appellant is in penury and indigent circumstances; and hence, she should have been considered for compassionate appointment. Whereas, the respondent authorities stated that there is no provision in G.O.Ms.No.120 dated 26.06.1995, to consider the application of an alternate legal heir for compassionate appointment and hence, the application submitted by the appellant beyond the period of three years from the date of death of the Government servant, is barred by limitation.



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8. Indisputably, the family, which suffers due to death of Government servant, shall apply for employment assistant under the scheme of compassionate appointment to mitigate the hardship caused to them. Such appointment has to be strictly made in accordance with the relevant G.O. or the scheme that has been framed by the employer. It may be true that G.O.Ms.No.120 dated 26.06.1995, referred to by the respondent authorities, does not speak about the alternative application. It is evident from the records that the appellant submitted her application seeking compassionate appointment on 13.01.2014 (i.e.) immediately after the death of her brother, whose application was kept in the waiting list till he passed away. However, the respondent authorities rejected the said application only on 19.03.2020 (i.e.) after a delay of six years. Thus, it is clear that there is a delay on the part of the respondent authorities in considering the claim of the appellant.

9. The Hon'ble Supreme Court time and again reiterated that the authorities must consider and decide the applications for appointment on compassionate grounds as per the prevalent policy, at the earliest. In a decision in ***Malaya Nanda Sethy v. State of Orissa and others [2022 LiveLaw (SC) 522]***, the Hon'ble Supreme Court observed thus:

"Considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering



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of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications."

In the aforesaid decision, the Supreme Court further went on to observe as follows:

"If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved."

10. In the present case, there is no delay on the part of the appellant in approaching the authorities seeking compassionate appointment and the delay is attributed only on the part of the authorities in considering the claim of the appellant. In the mean while, various changes have taken place relating to the scheme of compassionate appointment and ultimately, G.O.Ms.No.18, Labour and Employment (Q1) Department dated, 23.01.2020 came to be passed, superseding all the G.Os earlier issued. In the said G.O., comprehensive guidelines were framed including the provision of alternative application, which is extracted below



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for better appreciation:

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"Alternative application: If the applicant (legal heir of deceased Government servant) died after applying for compassionate ground appointment, an alternative application may be accepted from the another legal heir of the deceased Government servant, subject to conditions prescribed for compassionate ground appointment."

In the light of the above, as on the date of rejection of the appellant's application, the provision for alternative application has been added in the G.O. relating to the scheme of compassionate appointment. According to the same, the appellant is entitled for consideration of compassionate appointment, if she is otherwise eligible.

11. As already stated above, after the death of the Government servant, the appellant's brother made the application seeking compassionate appointment within the prescribed period, which was taken on record and his name was kept in the waiting list till he passed away. Due to the death of her brother, the appellant made application requesting to provide her a suitable job on compassionate ground, instead of her brother. As such, the application of the appellant cannot be treated as one submitted by alternate legal heir, but it should be treated as in continuation of her brother's application. As held supra, there is no delay on the part of the appellant in approaching the authorities. It is also evident from the records that the appellant's father died in 2004 leaving behind his wife and two young children; within a few days, the appellant's mother passed away, leaving



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the appellant and her brother as orphans; in the year 2013, the appellant's brother also died, leaving the appellant handicapped. In such circumstances, the order of the third respondent rejecting the claim of the appellant, seeking compassionate appointment, belatedly, placing reliance on the earlier G.O., by the order impugned in the writ petition, cannot be allowed to be sustained and is hence, liable to be set aside. Consequently, the order of the learned Judge affirming the said order, also fails.

12. At this juncture, it is worthwhile to refer to the decision of the Supreme Court in ***Balbir Kaur v. Steel Authority of India Limited [(2000) 6 SCC 493]*** wherein, it was held as under:

"In the case of appointment considering the social and economic justice as enshrined in the constitution, denials of deserving cases are liable to be set aside. Further, the purpose of providing compassionate ground to a son or daughter or a near relative of the deceased government servant is to render assistance to the family, which is found in indigenous circumstances. Hence, in considering the case for compassionate appointment, the authorities are supposed to adopt a human outlook."

In the aforesaid decision, in paragraph 19, it was further held as follows:

"The concept of social justice is the yardstick to the justice administration system or the legal justice and as Respondent pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."



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13. Applying the above legal proposition to the facts of the present case, this court is of the opinion that the appellant is entitled for consideration for compassionate appointment. Accordingly, the following order is passed in this writ appeal:

(i)The orders impugned herein as well as in the writ petition, are set aside;

(ii)The respondent authorities are directed to consider the claim of the appellant for appointment on compassionate ground on any post commensurate with her qualification and pass appropriate orders, as expeditiously as possible.

14. This writ appeal stands allowed on the above terms. No costs.

[R.M.D,J.] [M.S.Q, J.]
09.01.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

1.The Home Secretary to the Government,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Director General of Police,
Dr.Radhakrishnan Salai Road,
Mylapore, Chennai.
Tamil Nadu - 600 004.



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3.The Commissioner of Police,
Huzur Road, Coimbatore,
Tamil Nadu - 641 018.