



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-07-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

WA No.3113 of 2021

And

CMP Nos.21593 of 2021 and 9855 of 2023 of 2023

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
Chennai-600 005.

2.The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
Madurai Division,
Madurai.

.. Appellants

-VS-

C.Kamalakshi

.. Respondent

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order passed by this Court in WP No.29802 of 2012 dated 08.03.2021.



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For Appellants : Ms.Y.Kavitha,
Standing Counsel for TWAD.

For Respondent : Mr.N.Subbarayalu for
Mr.R.Vasudevan

J U D G M E N T

[JUDGMENT OF THE COURT WAS DELIVERED

BY S.M.SUBRAMANIAM, J.]

The Compassionate Appointment is an exception and the same cannot be claimed as an absolute right. Compassionate Appointment since not an absolute right and a concession, cannot be considered beyond the scope of terms stipulated under the Scheme. 'Legal Right' and 'Concession' cannot be equated. The Scheme being violative of Articles 14 and 16 of the Constitution of India, has to be implemented scrupulously in accordance with the terms and conditions stipulated.



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2. The Compassionate Appointment is not a method of appointment and not a Constitutional Scheme of appointment. The Scheme is implemented to mitigate the circumstances arising on account of death of an employee. Therefore, mitigating circumstances with reference to death of an employee is to be considered for appointment on compassionate grounds. Equal opportunity in public employment is a constitutional mandate. Extra constitutional appointments cannot be implemented beyond its scope infringing the right of the candidates aspiring to secure public employment through open competitive process. Lapse of time is also a ground to reject the appointment on compassionate grounds, since the penurious circumstances arose on account of the death of an employee became vanished on account of efflux of time. Therefore, the Courts have held that after lapse of many years from the date of death of an employee, the Scheme of Compassionate Appointment cannot be implemented as the purpose, for which it is to be given, lost its relevance.



3. In the present case, the husband of the respondent died on 27.05.1995, while he was in service. The wife of the deceased husband submitted her application for compassionate appointment on 07.03.1996 and the appellant-Board rejected the same on 07.05.2004, as the Scheme of Compassionate Appointment was suspended by the appellant-Board and the same remains unchallenged. However, the respondent reached the age of 52 years and thereafter submitted application in the year 2004 to provide employment to her son under the Compassionate Appointment Scheme. Such application submitted after a lapse of 9 years to provide employment to another legal heir is not entertainable. However, the appellant-Board considered the first application submitted by the respondent and provided appointment at the age 58 years and therefore, the respondent could not join duty. Such an appointment provided at the age of 58 by the appellant-Board to the respondent, is improper. Equally, the application submitted after 9 years from the date of death of an employee to provide appointment to another legal heir, is also not entertainable.



4. The learned counsel for the respondent would contend that the family is still in indigent circumstances. The continuance of indigent circumstances may be on various reasons and such reasons cannot be taken into account for the purpose of providing compassionate appointment. Compassionate appointment is to be provided within the reasonable period from the date of death of an employee. The purpose and object of the Scheme, cannot be diluted and it is not the object that one one appointment is to be provided to the legal heirs of the deceased employee and it has got definite purpose and such purpose if superseded would result in infringement of the rights of eligible candidates, who all are longing to secure employment under the constitutional scheme of appointment.

5. In the present case, already 28 years lapsed from the date of death of the deceased employee. The appointment was given to the respondent at the age of 58 years, which cannot be said to be proper. However, the second application given for appointment to another legal heir of the deceased, is not entertainable, since the said application is given after a lapse of 9 years.



6. For all these, we do not find any reason to sustain the writ order impugned. Consequently, the order dated 08.03.2021 passed in WP No.29802 of 2012 stands set aside and the present Writ Appeal is allowed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are closed.

(S.M.SUBRAMANIAM,J.) (C.KUMARAPPAN,J.)

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Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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