



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.24981 of 2023
and W.M.P.No.24403 of 2023

Ms.P.Shruthi

... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
NVN Maalikai, Poonamallee High Road,
Kilpauk, Chennai – 600 010.

2.The Deputy Registrar of Co-operative Societies,
1st Floor,
District Collectorate Complex,
Nallipalayam Post,
Namakkal 637 003.

3.The Managing Director,
S.607, Namakkal Agricultural Producers' Cooperative Sales Society Ltd.,
No.69, Thiruchengode Road,
Namakkal – 637 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the records of the Impugned letter dated 26.06.2023 vide proceeding Na.Ka.No.3575/2021/Kika



issued by the 2nd respondent quash the same and consequently direct the 3rd respondent to provide employment to the petitioner on compassionate ground.

For Petitioner : Mr.R.Balaramesh

For Respondents : Mr.P.Ganesan

Government Advocate for R1 and R2

Mr.K.Surendran for R3

ORDER

This writ petition has been filed challenging the impugned communication dated 26.06.2023 issued by the 2nd respondent and for a consequential direction to the 3rd respondent to provide employment to the petitioner on compassionate ground.

2.The case of the petitioner is that her father was working as a Driver in the 3rd respondent Society. Unfortunately, he died in harness on 29.04.2009 leaving behind three minor daughters which included the petitioner and her grandmother. The mother of the petitioner had predeceased her husband on 01.01.2008. Thus, all the minor daughters came under the care and control of their grandmother who was aged about 85 years at the relevant point of time.



3.The further case of the petitioner is that in the year 2017, she attained majority and thereafter, she made a representation to the 3rd respondent seeking for appointment on compassionate grounds. By then, the grandmother of the petitioner also died. After repeated representations, ultimately, the request of the petitioner was considered by the 2nd respondent. The 2nd respondent through the impugned communication dated 26.06.2023 rejected the claim made by the petitioner on the ground that the petitioner did not make the request for compassionate appointment within a period of three years from the date of the demise of her father. The 2nd respondent in order to support this finding, relied upon the Circular dated 03.01.1998, issued by the Registrar of Co-operative Societies. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The 3rd respondent has filed a counter affidavit. In the counter affidavit, the 3rd respondent has taken a stand that the application made by the petitioner was rejected, since it was received three years after the death of her father. In view of the same, since the application was not in compliance with the requirements of the relevant Circular and the Government Order in



G.O.(Ms)No.18, Labour and Employment Department, dated 23.01.2020, the request of the petitioner seeking for compassionate appointment was rejected.

Accordingly, the respondents have sought for the dismissal of this writ petition.

5.Heard Mr.R.Balaramesh, learned counsel appearing on behalf of the petitioner, Mr.P.Ganesan, learned Government Advocate appearing on behalf of respondents 1 & 2 and Mr.K.Surendran, learned counsel appearing on behalf of the 3rd respondent.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.The short issue that arises for consideration in the present writ petition is as to whether the petitioner who was admittedly a minor at the time of the demise of her father, could have made an application seeking for compassionate appointment within three years and whether the request made by the petitioner can be rejected on the ground that the application was not made within three years from the date of the death of her father.



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8. The issue that is involved in the present writ petition is no longer *res integra* and this Court has dealt with this on number of occasions. One such order was passed in W.P.No.11397 of 2016 dated 19.07.2021. The relevant portions are extracted hereunder:

9. The issue as to whether a minor can make an application within three years from the date on which he attains majority, in cases where the minor's mother had made an application within three years from the date of death of the employee, had come up for consideration on various occasions before this Court and in one such Writ Petition, this Court had relied upon the earlier decision of this Court and had upheld that such an application made by the legal heirs within three years after attaining majority, is maintainable. The relevant portion of the order passed in W.P.(MD)No.12593 of 2016 dated 29.06.2020 reads as follows:-

“4. This court in various decisions has held that a minor legal heir is entitled to make request for compassionate appointment within 3 years from the date



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he attains majority. One such order passed by this Court in W.P.No.26343 of 2012 dated 23.11.2016 in the case of M.Sathish Kumar vs. the"Director of School Education and others, had placed reliance on two orders of the Hon'ble Division Benches of this Court and ultimately held that, when an application is made within three years from the date of attaining majority, the claimant would be entitled for appointment on compassionate grounds. The relevant portion of the order reads as follows:

'4. In this context, a Division Bench of this Court in a judgment reported in The Chief Engineer/Personnel, T.N.E.B., & another Vs. S.Suder reported in MANU/TN/0635/2009 was held as follows:

"4.In the judgment reported in 2001 Writ L.R.601 in the case of "Ramados.D. Vs. The Chief Engineer, T.N.E.B.", this Court (D.Murugesan,J) directed the consideration of the application made within a period of three years after attaining the majority by placing reliance on the very same Circular in B.P.No.46, dated 13.10.1995.

5.Subsequently, in the judgment reported in



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2002(4) L.L.N.1132, (D.Murugesan,J.), in the case of "P.Ravi V.Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on compassionate grounds was directed to be considered.

6.Justice P.D.Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P.No.19673 of 2003, in the order dated 23.09.2003, in the case of "J.Jayakaran Vs. The Superintending Engineer, Theni Electricity Distribution Circle, Theni" and the application for appointment on compassionate grounds was directed to be considered.

7.Justice K.Govindarajan has also taken the same view in Writ Petition No.13099 of 2003, order dated 30.10.2003, in the case of "G.Muthamilselvan V. The Chief Engineer (Personnel) and Anr."

8.Justice F.M.Ibrahim Kalifulla has also taken the same view in the decision reported in 2004(3) CTC 120, (2004) MLJ 238 in the case of "Meer Ismail Ali.T. V.The Tamil Nadu Electricity Board". We are told that the order in the said case of "Meer Ismail Ali" was confirmed in the Writ Appeal by the Division



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Bench in W.A.No.4008 of 2004, by judgment dated 1.12.2004 and as against the said judgment dated 1.12.2004, the Special Leave Petition in Civil Appeal No.6387 of 2005, was also dismissed by the Supreme Court, by judgment dated 4.4.2005."

5. In a very similar issue, a Division Bench of this Court in W.P.No.3050 of 2003 observed as follows:

"9.Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No.3050 of 2003 in the case of "Indiraniammal V. The Chief Engineer (Personnel) and Anr." and by judgment dated 08.03.2005, the Division Bench set aside the impugned order therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to consider the application.

10.There cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, bypassing the Rules to be followed for such appointment. Nevertheless, to tide over the financial constraints of



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a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the office of the Assistant Engineer, TNEB, Kazhuvanthilai, Kanyakumari District, died due to illness on 07.03.1998. At the time of the death of his father, the respondent was 15 years old and for the purpose of making application for appointment on compassionate grounds, he should have completed 18 years. Hence, he could not make any application for appointment on compassionate grounds. By placing reliance on B.P.No.46, dated 13.10.1995, he made application on 3.9.2002, within a period of four days from the date of his attaining majority, i.e., 18 years.



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That application was rejected on the ground that the same cannot be entertained as per the Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis of the Memo, dated 6.4.2002.

12.As we have already referred that the application for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board proceedings in B.P.No.46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority."

6. If the above proposition is applied to the present facts of the petitioner, then the petitioner would be entitled for an appointment on



compassionate ground, since the application has been made within a period of three years from the date of attaining majority. Since this application for compassionate appointment was rejected on the sole ground that the same was time barred and by applying the ratio in the decision of the Division Bench, the impugned order cannot be sustained and is liable to set aside. Accordingly, the impugned order dated 31.01.2012 passed by the third respondent is quashed.'

5. The aforesaid order is self explanatory. As such, the issue as to whether the widow or any other legal heir, who was major at the time when the employee had expired, had or had not made an application within three years from the date of death becomes immaterial. What would suffice is as to whether the minor legal heir had made an application seeking for compassionate appointment within three years from the date he had attained his majority.

6. In the instant case, the petitioner had become major on 10.02.2014. In view of the aforesaid findings he would be entitled to seek compassionate appointment till 10.02.2017. However, his application was already pending



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before the first respondent and the impugned order of rejection came to be passed in the year 2016, which is before the expiry of three years from the date on which the petitioner had attained majority.

7. Apart from the above observations, the Hon'ble Division Bench of this Court had earlier in an order passed in W.A.(MD)No.1400 of 2011 dated 16.12.2015 in the case of S.Velraj Vs. The Superintendent Engineer, TNEB, Tirunelveli and another, had held that three years limitations prescribed for making an application for compassionate appointment cannot be applied in a strait jacket formula and each and every case has to be approached differently, based on the facts. The Scheme for appointment on compassionate ground to the children of the deceased employee is a welfare scheme, to tide over the financial constraints of the bereaved family due to the sudden demise of the breadwinner of the family. As such, the mother's application on behalf of the petitioner, was deemed to be pending for atleast 3 years from the day on which the petitioner became a major and the pre-matured rejection order stating that the petitioner had not completed 18 years at the time of his application, cannot be sustained.



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8. *In view of all these reasons, the rejection itself is not proper and consequently, the petitioner would be entitled for appointment on compassionate grounds.”*

10. *The aforesaid order is self-explanatory. As such, when it is not in dispute that the widow of a late employee had made an application within three years from the date of the death of the employee and thereafter, the son of the late employee had made an application seeking for compassionate appointment, within three years from the date on which he became a major, such an application is maintainable and consequently, her son would be entitled for consideration for compassionate appointment. As a result, the reasons assigned in the present impugned order cannot be sustained.*

11. *In the light of the above observations, the impugned order passed by the third respondent herein in Na.Ka.No.4307/1996/A2 dated 05.05.2015, is hereby quashed. Consequently, the first respondent herein is called upon to reconsider the petitioner's application dated 16.04.2012 for compassionate appointment and pass necessary orders for grant of appointment on compassionate grounds, without*



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quoting the three years period from the date of death of the employee, as a bar. Such an exercise shall be completed, atleast within a period of three months from the date of receipt of a copy of this order.

9.It is true that G.O.(Ms)No.18, Labour and Employment Department, dated 23.01.2020, mandates that the application seeking for compassionate appointment must be made within a period of three years from the date of demise of the employee. However, the period of three years that has been provided under the Circular and the Government Order must be given a meaningful interpretation. The petitioner at the relevant point of time was only 13 years. If she had to give the application within three years, she would have been hardly 16 years. It is not known as to how such an application could have been considered when the petitioner was still a minor if this application was given within three years. That is the reason why this Court has been repeatedly holding that the period of three years must be reckoned from the date on which the person becomes a major. Once that is done, it sufficiently satisfies the requirement of the relevant Circular and the Government Order.



10.In the light of the above discussion, the impugned communication passed by the 2nd respondent in Na.Ka.No.3575/2021/Kika, dated 26.06.2023, is unsustainable and the same is hereby quashed. Consequently, there shall be a direction to the 2nd respondent to reconsider the application submitted by the petitioner seeking for compassionate appointment and pass necessary orders by granting appointment on compassionate grounds without quoting the three years period. This exercise shall be completed by the 2nd respondent, within a period of twelve weeks from the date of receipt of copy of this order.

11.In the result, this writ petition stands allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

06.08.2024

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
ssr

To

1.The Registrar of Co-operative Societies,



NVN Maalikai, Poonamallee High Road,
Kilpauk, Chennai – 600 010.

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2. The Deputy Registrar of Co-operative Societies,
1st Floor,
District Collectorate Complex,
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N. ANAND VENKATESH, J.

ssr

3.The Managing Director,
S.607, Namakkal Agricultural Producers' Cooperative Sales Society Ltd.,
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