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W.A.No. 2277 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.06.2024

DELIVERED ON: 02.09.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE KUMARESH BABU

W.A.No. 2277 of 2022

M.Arunbalaji

.. Appellant

Vs

1. The Government of Tamil Nadu,
Rep by its Principal Secretary to Government
School Education Department,
Fort St.George, Chennai-600009

2. The Joint Director of School Education,
(Personnel), College Road,
Chennai-600006.

3.The Chief Educational Officer,
Tiruppur, Tiruppur District.



W.A.No. 2277 of 2022

4. The District Educational Officer,
Dharapuram, Tiruppur District.

5. The Block Educational Officer,
Mulanur, Tiruppur District.

..Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.09.2021 in W.P.No.20072 of 2021

For Appellant : Mr A.S.Kaizer

For Respondents : Mr.J.C.Durairaj, AGP

J U D G M E N T

(D.KRISHNAKUMAR, ACTING CHIEF JUSTICE.)

Aggrieved by the order passed by the writ court in W.P.No.20072 of 2021, dated 21.09.2021, the present writ appeal has been filed by the appellant.

2. Before advertng to the submissions made by learned counsel for the parties, a brief reference to the relevant facts is necessary:



W.A.No. 2277 of 2022

WEB COPY

2.1 The appellant's mother, Tmt. R. Kasturi, died on 30.12.2012 while serving as the Headmistress at Panchayat Union Elementary School, T. Sanarpalayam, Mulanur Panchayat Union, Trippur District. Following her death, the appellant, the son of the deceased, made an application to the authorities seeking compassionate appointment. The appellant was 17 years old at the time of making the said application. The District Educational Officer (the 4th Respondent) returned the appellant's proposal with queries on 23-10-2014, which was resubmitted by the 5th Respondent on 16-06-2015 after correcting the defects. This process of returning and resubmitting the application occurred till the year 2017. On 28-06-2017, the appellant attended an enquiry as requested by the 4th Respondent through a communication dated 21-06-2017.

2.2 On 01-12-2020, the Chief Educational Officer, Tiruppur (the 3rd Respondent), rejected the appellant's application for compassionate appointment, stating that he had not completed 18 years of age at the time of submitting the first application submission. Challenging the said rejection



W.A.No. 2277 of 2022

order, the appellant filed a writ petition in W.P. No. 20072 of 2021 and by order dated 21.09.2021, the said writ petition was dismissed by this Court on the ground that his family was not in indigent circumstance, as evidenced by the appellant's ability to complete his graduation in engineering. Challenging the same, the present writ appeal has been filed.

3. The learned counsel for the appellant has submitted that the Writ Court ought not to have dismissed the writ petition on the ground that the appellant had not completed 18 years at the time filing application for compassionate appointment. While the appellant had initially applied at the age of 17, he completed 18 years of age at the time of processing the application by the 4th respondent.

4. The learned counsel for the appellant has further submitted that G.O. Ms. No. 18 of the Labour and Employment Department dated 23-01-2020 clarifies that the pension of the deceased employee and immovable property should not be taken into account when assessing the family's income. Thus, the rejection of the application by the respondents based on



W.A.No. 2277 of 2022

the appellant's family receiving a family pension and owning immovable property was not in line with this government order.

5. The learned counsel for the appellant has further submitted that the appellant had completed his graduation under significant financial strain and by raising loans, which demonstrates the family's indigent circumstances. The respondent authorities failed to consider the overall facts and circumstances, instead relying solely on G.O. Ms. No. 18. The appellant's application was submitted within the three-year period of limitation, and he complied with all requests for documents over nearly four years, showing his earnestness and eligibility. The prolonged delay of 7 years in processing the application by the respondents-authorities caused undue hardship and mental agony for the appellant. Without considering the above factual aspects, the Writ Court had dismissed the writ petition only on the ground that appellant had completed graduation in Engineering and the family of the appellant receiving pension is unjust and liable to be set aside.



W.A.No. 2277 of 2022

6. The learned counsel for the respondent-authority submitted that the rejection of the appellant's application for compassionate appointment was justified and in accordance with the relevant rules and regulations. The learned counsel has submitted that the appellant's initial application was indeed submitted when he was underage at 17, and the rules clearly state that the applicant must be at least 18 years old at the time of application. The subsequent resubmission does not alter the fact that the initial application did not meet the age requirement. Moreover, the prolonged delay in processing the application was largely due to the appellant's own failure to meet the necessary criteria and provide correct documentation in a timely manner.

7. The learned counsel has further submitted that the evaluation of the family's financial condition was conducted in compliance with the applicable government orders. While G.O. Ms. No. 18 of the Labour and Employment Department dated 23-01-2020 states that the pension and immovable property should not be considered, the overall financial stability of the family, including the ability to support the appellant through his



W.A.No. 2277 of 2022

engineering graduation, indicated that they were not in indigent circumstances. The family's ability to secure loans and manage the expenses for the appellant's higher education suggests a level of financial stability. The Writ Court has considered the above facts and rightly dismissed the writ petition, therefore the impugned order of the Writ Court is perfectly valid and in accordance with rules in force and does warrants any interference by this Court.

8. Heard the learned counsel appearing for the appellant and learned counsel appearing for the respondents and perused the documents available on record.

9. Before advertng into the merits of the case, it is relevant to discuss the principles and guidelines framed by the Hon'ble Supreme court for granting compassionate appointment to the legal heirs of the deceased Government Employee. In this context, it is necessary to rely upon the recent judgmnet of the Hon'ble Supreme Court in ***The State of West Bengal Vs. Debabrata Tiwari & Others in Civil Appeal Nos. 8842 to 8855 of 2022,***



W.A.No. 2277 of 2022

reported in 2023 SCC Online SC 219, wherein the Hon'ble Supreme Court

by relying upon the various decisions, underscored the objective and procedural requirements for compassionate appointments. The Hon'ble Supreme Court further emphasized that compassionate appointments are intended to provide immediate relief to the families of deceased employees facing sudden financial crises. Relevant paragraphs are extracted below;

Policy of Compassionate Appointment: The Rationale:

7. The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being as a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain. Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family. Support for such a provision has been derived from the provisions of Part IV of the Constitution of India, i.e., Article 39 of the Directive Principles of State Policy.



7.1 It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment.

i. ***In Sushma Gosain vs. Union of India, (1989) 4 SCC 468***, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

ii. ***In Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138***, this Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood; the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family, provided a scheme or rules provide



for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome.

- iii. *In Haryana State Electricity Board vs. Hakim Singh, (1997) 8 SCC 85, ("Hakim Singh")*_this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

- iv. This Court in *State of Haryana vs. Ankur Gupta, AIR 2003 SC 3797* held that in order for a claim for compassionate appointment to



be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.

- v. There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) vs. Prahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in Mumtaz Yunus Mulani vs. State of Maharashtra, (2008) 11 SCC 384, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.
- vi. In *State of Jammu and Kashmir vs. Sajad Ahmed Mir*, AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application was made by the applicant after four and half years in



W.A.No. 2277 of 2022

September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.

10. With regard to the manner in which the authorities must consider and decide applications for appointment on compassionate grounds also considered in detail by the Hon'ble Supreme Court in the aforesaid decision. The relevant paragraphs are extracted hereunder;

11. It may be apposite at this juncture to refer to the following observations of this Court in *Malaya Nanda Sethy vs. State of Orissa*, AIR 2022 SC 2836, as to the manner in which the authorities must consider and decide applications for appointment on compassionate grounds:



“9. Before parting with the present order, we are constrained to observe that 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 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.

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of



litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

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.”



W.A.No. 2277 of 2022

11. Now coming to the facts of the case on hand, the appellant's mother R. Kasturi, died on 30.12.2012 while serving as the Headmistress at Panchayat Union Elementary School, T. Sanarpalayam, Mulanur Panchayat Union, Trippur District. The appellant made an application to the 4th respondent/District Educational Officer, Tiruppur on 29.10.2013, which is within the limitation period of three years as prescribed in G.O.Ms.No. 18, dated 23.01.2020. Admittedly, the appellant was 17 years at the time of submitting his application. A perusal of typed set of papers reveals that the District Educational Officer (the 4th Respondent) returned the appellant's proposal with queries on 23-10-2014, which was resubmitted by the 5th Respondent on 16-06-2015 after correcting the defects. This process of returning and resubmitting the application continued till the year 2017. On 28-06-2017, the appellant attended an enquiry as requested by the 4th Respondent through a communication dated 21-06-2017. Thereafter till the year 2020 the respondents' authorities were making internal communications without taking any decision on the application. Finally on 01-12-2020, the Chief Educational Officer, Tiruppur (the 3rd Respondent), rejected the appellant's application for compassionate appointment on the



W.A.No. 2277 of 2022

ground that he had not completed 18 years of age at the time of submitting the application. From the entire communication between the respondents 3 & 4, for the period from 2013 to 2017, it is seen that in none of the occasion the authorities raised objection with regard to the minority status of the appellant based on his date of application. Finally on 01.12.2020, the 3rd respondent had passed the rejection order, by relying upon the guidelines framed in G.O.Ms.No. 18, dated 23.01.2020 that too after a period of 7 years, merely on the ground that the appellant had not completed 18 years.

12. The contention of the appellant is that after receipt of the application from the appellant, the 5th respondent kept the same idle in his office and forwarded to the 4th respondent /appointing authority only on 22.09.2014 i.e after appellant reaching the age of 18 years. Further the date of the receipt of the application by the 4th respondent who is the appointing authority/competent authority/Head of the office alone to be reckoned for all purposes and not the date on which it was left before the 5th respondent, who forwarded the same to the appropriate and competent authority.



W.A.No. 2277 of 2022

13. Since the rejection of the appellant's application was based on the guideline framed in G.O. Ms. No. 18, Labour and Employment Department, dated 21-01-2020, it is necessary to extract the relevant clauses of the said G.O.

TIME LIMIT TO PREFER THE APPLICATION:

The application for the compassionate ground appointment may be submitted within 3 years from the date of death of the Government Servants.

AGE LIMIT FOR THOSE ELIGIBLE UNDER COMPASSIONATE GROUND APPOINTMENT

- (i) The minimum age is 18 years at the time of submitting application for compassionate ground appointment.**
- (ii) The maximum age limit for the spouse/father/mother is 50 years on the date of death of the Government servant.
- (iii) The maximum age limit for the son or daughter of the deceased Government Servant and unmarried brother/unmarried sister of the unmarried deceased Government Servant is 40 years at the time of applying.

FAMILY TO BE IN INDIGENT CIRCUMSTANCES TO BE ELIGIBLE UNDER COMPASSIONATE GROUND APPOINTMENT:

...
....



(iii). *The family pension of the deceased employee and the immovable property like living house of the employee need not be taken into account while assessing the income of the family.*

However income received from the movable/immovable properties in the name of the Government Servant's family members should be taken into account. Certificate is to be issued by the jurisdiction Tahsildar.

14. The said G.O. provides a three-year window for the submission of applications for compassionate appointments, commencing from the date of death of the government servant. The purpose of this stipulation is to ensure that the family of the deceased receives timely support and that the immediate financial crisis caused by the death of the breadwinner is alleviated. The three-year period is designed to provide adequate time for the family to organize and submit the necessary application.

15. In this context, the appellant's situation presents a unique case. Although the application was submitted by the appellant when he was 17 years old, he attained the minimum eligibility age of 18 years within the stipulated three-year period in the said G.O. The critical factor to consider here is the intent behind the G.O., which aims to provide relief to families in need within a reasonable time frame. Since the appellant had attained the



W.A.No. 2277 of 2022

majority within the prescribed period of three years, We are of the view that the appellant had complied with the spirit of regulations and deserves for the relief.

16. It is clear from the records that the authorities communicated with the appellant over four years (2013 to 2017), directing to submit certain documents and clarifications, without raising any objections. This indicates that the date of application was not an impediment for the respondents initially, and therefore it is unreasonable to reject the application on this ground after prolonged delay on the part of the respondent-authorities.

17. In the judgment of the Hon'ble Supreme Court *Malaya Nanda Sathy vs. State of Orissa (cited supra)* has observed that applications for compassionate appointments often face long delays and unfair rejections, forcing applicants to approach the court for help and directed the authorities concerned to pass orders on the application within a time limit as per the rules in force. Admittedly, in the present case, as discussed above, the respondent authorities had received the appellant's application on 29.10.2013 and passed rejection order on 01.12.2020. Thereafter, the



W.A.No. 2277 of 2022

appellant approached the writ court in the year 2021, which came to be dismissed on 21.09.2021. Undisputedly, the appellant was forced to wait for the outcome of his application for 7 years. In view of the observations made by the Hon'ble Supreme Court in decision of *Malaya Nanda Sethy's case*, we are of the view that time limit for considering the application also to be included in the said G.O. Since the column (v) under the head Procedure for processing application stipulates 15 days time to only issue orders of appointment by the Head of the Department after considering the request.

18. With regard to the observations made by the writ court in the impugned order, while dismissing the writ petition that the appellant's family is receiving family pension and the appellant has completed his graduation in Engineering, the said G.O. No. 18 (extracted above) clearly stipulates that pension should not be counted when evaluating the financial condition for compassionate appointment purposes. This guidelines aligns with the policy's aim of providing immediate relief to the families facing financial distress due to the loss of the sole breadwinner. Therefore, We are of the view that dismissing the writ petition on the basis of appellant's family



W.A.No. 2277 of 2022

receiving pension is contrary to the specific guidelines set forth in said G.O.

No.18 and requires interference by this Court.

19. On overall consideration of facts and circumstances of the case, We are of the view that the guidelines framed in G.O. Ms. No. 18, Labour and Employment Department, dated 23-01-2020 require certain inclusions as mentioned in the preceding paragraphs, since the said G.O. Ms. No. 18, dated 23.01.2020 was issued by the Government to consider the broader objective of compassionate appointments, which is to provide immediate support to the deprived family.

20. Accordingly, we direct the 1st respondent to frame guidelines and include the same in the said G.O. Ms.No. 18, dated 23.01.2020 as discussed in the preceding paragraphs and communicate the same to all the authorities concerned to follow scrupulously. In this light, the appellant's case should be considered favourably for the following reasons:



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i. ***Time limit:*** The appellant's initial application was submitted within the three-year period stipulated by the G.O. This shows adherence to the prescribed timeframe, indicating that the family sought to avail themselves of the compassionate appointment promptly.

ii. ***Eligibility:*** Although the appellant's age was 17 years at the time of the initial application, he attained the age of 18 years within the three-year period. This fulfillment of the age requirement within the stipulated time frame aligns with the G.O.'s objective of providing timely relief.

iii. ***Inordinate delay :*** After submitting application by the appellant in the year 2013, the respondents-authority have made only internal communications for seven years, thereafter, the rejection order was passed in the year 2020 on the ground that the appellant had not completed 18 years of age at the time of submitting application. The purpose of the G.O. is to ensure that the families of deceased government servants receive necessary support without undue delay. Eventhough the appellant did not have minimum eligibility of 18 years, considering the



W.A.No. 2277 of 2022

WEB COPY

fact that he was 17 years at the time of submitting application and the inordinate and unreasonable delay on the part of the respondents-authorities, We are of the view that the appellant's case cannot be rejected due to shortage of one year as he had attained minimum eligibility of 18 years, within a period of three years as prescribed in G.O.Ms.No. 18, dated 23.01.2020.

21. In light of the aforesaid discussions, it is to be reiterated that there was a lapse on the part of the respondent-department in considering the application on time and the appellant has also completed 18 years of age within one year from the date of the application. As per G.O.Ms.No. 18, dated 23.01.2020, the application should be submitted within a period of three years from the date of death of the deceased Government employee. When such leverage is granted to the dependants to submit their application within three years, the act of the respondents in rejecting the said application after a delay of seven years, requires reconsideration.



W.A.No. 2277 of 2022

WEB COPY 22. In such peculiar types of cases, where the application for compassionate appointment has been submitted within the period of three years and the applicant also reaches majority within such period of time, we direct the Government to consider these types of cases by granting relaxation by way of necessary amendment or modification in the aforesaid Government Order.

23. As far as the case on hand is concerned, after submitting application by the appellant in the year 2013, the respondents-authority have made only internal communications for seven years, thereafter, the rejection order was passed in the year 2020 on the ground that the appellant had not completed 18 years of age at the time of submitting application is logically may not be correct. Since there is a delay on the part of the respondent in considering the application for which, the appellant cannot be put to hardship. In such circumstances, we are of the view that the rejection order passed by the respondent and the order of the writ Court are liable to be set aside. Accordingly, this Court passes the following order;



W.A.No. 2277 of 2022

WEB COPY

- i. The rejection order dated 01.12.2020 passed by the 3rd respondent and the order of the writ Court in W.P.No. 20072 of 2021, dated 21.09.2021 are set aside.
- ii. In light of the observations made in the preceding paragraphs of the judgment, the 1st respondent/Government shall make necessary amendments or modification in G.O.Ms.No.18, Labour and Employment Department, dated 23.01.2020 with regard to relaxation of age limit for the applicants who fall under peculiar circumstances and pass necessary orders, within a period of twelve weeks from the date of receipt of a copy of the order.
- iii. The petitioner is also permitted to make a representation to the respondents seeking for relaxation of age, within a period of two weeks from the date of receipt of a copy of the order.
- iv. On such representation is being made, the Government shall consider the same and pass appropriate orders, within a period of twelve weeks from the date of submission of the representation, subject to the decision taken for relaxation in the said Government Order.



W.A.No. 2277 of 2022

WEB COPY

24. With the above observations and directions, the writ appeal is allowed. No costs.

[D.K.K., A.C.J.,] [K.B., J.]

02.09.2024

Index: yes

Internet:yes

Speaking Order

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To

1. The Principal Secretary to Government
School Education Department,
Fort St.George, Chennai-600009
2. The Joint Director of School Education,
(Personnel), College Road, Chennai-600006.
3. The Chief Educational Officer,
Tiruppur, Tiruppur District.



W.A.No. 2277 of 2022

WEB COPY

4. The District Educational Officer,
Dharapuram, Tiruppur District.

5. The Block Educational Officer,
Mulanur, Tiruppur District.



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W.A.No. 2277 of 2022

THE HON'BLE ACTING CHIEF JUSTICE

&

K. KUMARESH BABU, J.

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Pre-Delivery Order in

W.A.No. 2277 of 2022

02.09.2024