



W.P.No.31833 of 20--

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 03.10.2024

ORDERS PRONOUNCED ON : 28.11.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.31833 of 2019

1. B.Kamalaveni
2. B.Panneerselvam

... Petitioners

Vs.

1. The Director General of Police,
Kamarajar Salai,
Chennai - 4.
2. The Superintendent of Police,
Kancheepuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in his proceedings in Na.Ka.41169/CA1/2014, dated 30.07.2019 and quash the same and thereby direct the respondents to appoint the petitioner or her son on compassionate grounds in any suitable post in the Tamilnadu Police Department.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.G.Ameedius, Government Advocate



ORDER

WEB COPY This petition has been filed to issue a Writ of Certiorarified Mandamus to quash the records of the 1st respondent in his proceedings in Na.Ka.41169/CA1/2014, dated 30.07.2019 and thereby direct the respondents to appoint the petitioner or her son on compassionate grounds in any suitable post in the Tamilnadu Police Department.

2. It is the case of the petitioners that the first petitioner is the wife of the deceased Bhagadurwas and the second petitioner is their son. The deceased Bhagadurwas was working as Police Constable in the Tamil Nadu Police Department from 27.05.1975. While he was in service, died on 01.03.1991 leaving behind the petitioners and 2 daughters. The deceased is the only breadwinner of the family. Subsequently, the first petitioner approached the second respondent seeking for compassionate appointment by submitting application along with all the certificates on 20.03.1995, but there was no response. Thereafter, once again the first petitioner made application on 01.09.2003 and the second petitioner made application on 05.09.2003 to consider the second petitioner for appointment on



WEB COPY

compassionate ground. The second respondent by his proceedings dated 02.04.2004 had recommended proposal for registering the second petitioner name in the compassionate appointment waiting list, but the same was not implemented. Thereafter, a proposal was sent on 16.02.2012 to confirm whether the second petitioner is eligible for compassionate appointment and if so, the second respondent was directed to submit all the required certificates. However, to the shock and surprise on 23.01.2014, the second respondent rejected the said application. Aggrieved over the same, the second petitioner challenged the said order by filing W.P.No.6798 of 2014 before this Court. This Court by order dated 25.02.2019 quashed the order of the second respondent and held that the plea is barred by limitation on the basis of the Government Order in G.O.Ms.No.120, dated 26.06.1995 is not correct and directed the respondents to consider the application of the petitioner. However, the first respondent passed the impugned order, which is illegal and not in accordance with law. Hence, the present Writ Petition.

3. The second respondent filed a counter affidavit stating that the first petitioner submitted her application not only belatedly, but she has periodically given petitions from 18.01.2001 onwards to the respondents



WEB COPY

requesting to give appointment to her son/the 2nd petitioner after attaining the age of majority on compassionate grounds, who was only 14 years of age and studying in School. There is no such provisions or rules applicable in the Tamil Nadu Police Subordinate Service Rules, 1955 to consider such applications for the government appointment at Police Department. The Supreme Court of India in many judgments observed that no reservation should be made to the minors for appointment under compassionate grounds and further stated that requesting appointment on compassionate ground is not a Fundamental Rights. As such, the petition filed by the petitioner dated 26.06.2019 which was rejected by the first respondent vide proceedings dated 30.07.2019 is not against the order of this Court dated 25.02.2019 in WP.No.6798 of 2019. There is no merit in this Writ Petition and hence, sought for dismissal of the same.

4. The learned counsel for the petitioners would submit that the first petitioner's husband died on 01.03.1991 in harness. The first petitioner made a representation on 20.03.1995 requesting to provide compassionate appointment and subsequently, the second petitioner made a representation on 05.09.2003 requesting to provide compassionate appointment. The



learned counsel contends that the said representation was rejected by the first respondent on 30.07.2019 on the ground that the job cannot be reserved for any person on compassionate grounds awaiting for his attaining majority.

5. The learned counsel further contends that while rejecting the claim of the petitioner for compassionate appointment, the first respondent failed to consider the aim and object of the compassionate appointment scheme and it was rejected on the ground of technicalities without considering the actual sufferings of the petitioners after the death of the deceased.

6. On the other hand, the learned Government Advocate appearing for the respondents would submit that the application claiming compassionate appointment has to be submitted within 3 years from the date of death of the deceased employee. In the present case, the application was submitted by the second petitioner belatedly and as such, the claim is rejected as per the procedure. Further, since the first petitioner's application for compassionate appointment is still pending for want of particulars, the second petitioner's application cannot be considered.



WEB COPY

7. Heard the learned counsel for the petitioners and the learned Government Advocate appearing for the respondents and carefully perused the materials available on record.

8. It is an admitted fact that the husband of the first petitioner died on 01.03.1991 in harness. The first petitioner made a representation for compassionate appointment on 20.03.1995. After attaining majority, the second petitioner made a representation dated 05.09.2003 for compassionate appointment. The first respondent rejected the same vide proceedings dated 30.07.2019 on the ground that he had not made his application within 3 years from the death of his father.

9. The issue involved in the present writ petition was already dealt by this Court and the Court of Andhra Pradesh and Apex Court in the following judgments:

i) A Division Bench of Madurai Bench of Madras High Court while dealing with a case in similar circumstances in ***P.Kasthuri vs. The Chief Engineer (Personnel) and another*** in W.A.(MD).No.792 of 2011 vide its



judgment dated 03.12.2015 directed the respondents therein to make compassionate appointment to the appellant therein considering the application submitted within the stipulated time by the mother of the appellant. The relevant paragraphs of the said judgment are extracted hereunder:

“7. One more aspect which has to be considered de hors of the Rules is the pathetic condition of the appellant and other children of late Palanivel. After the death of the said Palanivel in 1994, his wife also passed away on 04.08.1996 after applying for compassionate appointment. In fact, the appellant and others have become orphans and they are looked after by their maternal uncle. When such is the pitiable condition, the respondents should have considered the appellant's application for compassionate appointment with compassion.

8. The learned Single Judge should also have taken into consideration the said aspect. The learned Single Judge, in fact, did not take into consideration the application made by the appellant's mother on 11.01.1996 for compassionate appointment which was in time. Therefore, the impugned order passed by the second respondent as well as the order of the learned Single Judge are set aside. The respondents are directed to make the compassionate appointment of the appellant on or before 01.04.2016, failing which the



respondents shall appear before this Court on 02.04.2016.”

WEB COPY

ii) In ***S.Velraj vs. The Superintendent Engineer and another*** in W.A.(MD).No.1400 of 2011, a Division Bench of this Court vide its judgment dated 16.12.2015 held that three years limitation cannot be applied in strait-jacket formula and each and every case has to be approached differently, based on the facts. The relevant paragraph is extracted hereunder:

“3. It is admitted fact that the employee died on 19.03.1992, leaving behind four children and at that time, the appellant is the eldest son, aged about 12 years. If he applied for appointment on compassionate ground at that time, when he was 12 years, his application would have been rejected on the ground that he was a minor and, therefore, on attaining majority, the appellant rightly applied for appointment on compassionate ground. However, taking into consideration the plight of the family and also the young age of the mother and other children, it is a case where appointment on compassionate ground has to be given. Three years limitation cannot be applied in strait-jacket formula and each and every case has to be approached differently, based on the facts. Since the eldest son of the family has rightly applied for appointment on compassionate ground, on attaining majority,



WEB COPY

the respondents have to consider the appellant's application for appointment on compassionate ground. ”

iii) In ***Priyadharshini vs. The Registrar General, High Court, Madras*** in WP.No.28945 of 2019, a Division Bench of this Court vide its judgment dated 25.11.2019 held that the respondents therein failed to consider the indigent circumstances of the petitioner therein and held that 3 years limitation period cannot be cited as a straight-jacket formula for rejecting the claim of the petitioner. The relevant paragraphs of the said order are extracted hereunder:

“8. We find from a perusal of the impugned order that the respondent has failed to consider the indigent circumstances of the petitioner. The application of the petitioner seeking appointment on compassionate grounds, was rejected mainly on the ground that she was minor and the application was not submitted within three years from the date of the death of her father. We find that she has submitted the application six months prior to her attaining majority. Therefore, within a reasonable time, she has submitted the application and after attaining majority, she has also made a representation, dated 06.03.2019.

9. In similar circumstances, this Court (Madurai Bench) in W.A.(MD).No.1400 of 2011 (S.Velraj Vs. The



WEB COPY

Superintendent Engineer, Tamil Nadu Electricity Board, Tirunelveli Electricity Distribution Circle, Tirunelveli), by order dated 16.12.2015 and in another judgment of this Court (Madurai Bench) reported in 2016 (5) CTC 125 (The Inspector General of Prisons Vs. P.Marimuthu), observed that the appointment on compassionate grounds had to be given considering the facts and circumstances of each case and therefore, the three-year limitation period cannot be applied as a straight-jacket formula and each and every case has to be approached differently based on the facts.

10. In the instant case, the factual aspects of the matter show that the petitioner has become orphan and her grandfather, under whom she is in the custody, is an age-old person and that the petitioner has also produced necessary documents to show that she has no sufficient funds to sustain herself.

11. Considering all the above aspects, we are of the opinion that this is a fit case to quash the impugned order. Accordingly, the impugned order is quashed. The Writ Petition is allowed as prayed for. The respondent is directed to give suitable employment to the petitioner commensurate with her educational qualification on compassionate grounds. No costs."

iv) In *The District Collector and 2 others vs. S.Santhi* in



W.A.No.2640 of 2018, a Division Bench of this Court vide its judgment dated 30.01.2023 held as follows:

WEB COPY

“5. We are alive to the fact that application for compassionate appointment should be made within a reasonable time, in the case on hand the application was made within a year, but due to certain circumstances the nominee was changed. Therefore, the petitioner cannot be blamed for the delay. In similar circumstances, where the elder son of the Government servant died and an application was made after six years nominating the younger son, a Division Bench of this Court in M.Namadeva v. The Director or School Education, made in WA No.4062 of 2019 dated 26.11.2019, had held that in such cases delay cannot be a ground to refuse compassionate appointment.”

v) In ***A.Chindamani vs. The General Manager and another*** in W.P.No.31311 of 2017, a learned Single Judge of this Court vide order dated 25.08.2021 held as follows:

“8. This is a case where the petitioner herself appears to be an uneducated and a semi-literate person. It is not expected for an uneducated homemaker to be aware of the Government orders, which are released from time to time, by the Government. Considering the fact that the petitioner's son was



WEB COPY

W.P.No.31833 of 20--



a minor at the time of the death of his father and also the fact that there was no other guideline which was uniformly being applied at the time of the death of the petitioner's husband, this Court is inclined to direct the respondent/Board to consider the petitioner's application for appointment on compassionate ground of her son, favourably by overlooking the three year limitation prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995. The respondent/Board may also consider the fact that several other persons who had applied after the petitioner's application were appointed after the limitation period of three years prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 had expired and by relaxing the same by applying G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020 which is currently prevailing for employment on compassionate grounds. The respondent/Board shall dispose of the application of the petitioner favourably, within a period of six weeks from the date of receipt of a copy of this order provided the petitioner satisfies the other criteria for appointment on compassionate ground."

vi) While considering the identical facts in a case in ***K.Michael Johnson vs. A.P.Southern Power Distribution Company Limited*** reported



in (2021) 2 ALD 43, the High Court of Andhra Pradesh directed the respondents therein to consider the claim of the petitioner to appoint him in a suitable post within a period of six months. The relevant paragraphs of the said order is extracted hereunder:

“20. Thus, such cases in which unfledged children lose their parents in harness have to be considered as “hard cases” and should be dealt with a humane outlook and thoughtfulness .

.....

....

23. In identical matters, the Hon’ble High Court of Madras following the decisions of the Hon’ble Apex Court in (1) T. Meer 5 (2007) 6 MLJ 1011 2021:APHC:1202 12 Ismail Ali Vs. The Tamil Nadu Electricity Board and others, (2) Selvi R. Anbarasi Vs. The Chief Engineer (Personnel), Tamil Nadu Electricity Board and others (3) The Superintending Engineer vs. V. Jaya and (4) M. Uma Vs. The Chief Engineer (Personnel), Tamil Nadu Electricity Board and others and (5) J. Jeba Mary’s case wherein directed the respondent authority therein i.e., Tamil Nadu Electricity Board to issue an order of appointment on compassionate grounds to the petitioners therein as per their qualifications.

24. In the present case, this Court already noted that the guardian of the petitioner made an application, dated 05.06.2003 within the stipulated period in favour of the



WEB COPY

petitioner, being a minor at that time and after attaining the age of 18 years she made another application on 14.11.2013 seeking appointment on compassionate grounds to the petitioner. Though this Court is having conscious of the directions of the Hon'ble Supreme Court on which the respondents relied in their counter, in view of the provision provided in the Board proceedings delegating the powers to relax the conditions to the Member Secretary of the APSEB and 6 2004 (3) CTC 120 7 (2006) 2 MLJ 200 8 (2007) 6 MLJ 1011 9 (2010) 7 MLJ 644 2021:APHC:1202 13 of the fact that the guardian of the petitioner has made an application within the stipulated time and also made subsequent application after attaining the age of majority by the petitioner and also taking note of the fact that the petitioner, who turned an orphan due to his father's death in harness, the claim of the petitioner has to be considered."

vii) In similar circumstances, a Division Bench of this Court in ***The State of Tamil Nadu, Rep. by its Secretary vs. C.Arnold,*** in WA(MD).No.479 of 2024, dated 01.04.2024, directed the appellants therein to provide compassionate appointment to the respondent therein within a period of 2 months. The relevant paragraphs are extracted hereunder:

"13.Therefore, it is not mandatory that at the time of



WEB COPY

making the application seeking compassionate appointment, the applicant or for whom such an application has been made seeking compassionate appointment to have a minimum years of age, that means on behalf of a minor also the application can be made, however, such application even if it is considered, the appointment can be given to the dependant or legal heir only after he or she attains majority.

14. Therefore, the intention of the Rule making authority is clear, unambiguous and explicit to state that under no circumstances compassionate appointment should be denied to a family which is in penurious circumstances where for want of attaining the majority of the legal heir or dependant of the deceased employees family, if compassionate appointment could not be given immediately, the employer can consider such application and grant the same or extend the benefit of compassionate appointment to such a dependant or legal heir of the deceased employee of the family on his attaining the majority.

15. When this intention of the Government has been made very clear under the Rule and the Rule has also been given to force with effect from 08.03.2023, thereafter, if the consideration is made in May 2023, in the case in hand, the Rule should have been applied and had it been applied, the



WEB COPY

W.P.No.31833 of 20--



application filed on behalf of the respondent/writ petitioner ought not to have been rejected by the employer. Therefore, the learned Judge since has interfered with the said order and given direction in the order impugned to consider the application for extending the benefit of compassionate appointment to the respondent/writ petitioner, in our considered view it is flawless and hence, the same is to be sustained. Accordingly, the impugned order is sustained. Hence, the Writ Appeal fails.”

viii) While dealing with a writ petition in WP.No.30954 of 2018 (***M.Swetha vs. The District Collector and 3 others***), filed in similar circumstances, this Court by its order dated 06.11.2024 observed as hereunder:

“7.The aim and object of providing compassionate appointment is to give immediate support to the family who lost their breadwinner who died over the sudden crises. For effective implementation of the compassionate appointment scheme, the State Government issued several instructions and order time to time. In several cases, it came to the notice of the Court that the respondents are maintaining the seniority list, district wise to provide compassionate appointment to the



WEB COPY

eligible legal heirs of the deceased employees who died in harness. In most of the cases, the State Government is taking more than 10 to 15 years to provide compassionate appointment by following the seniority list maintained by them.

8. Under these factual position, the ground raised by the respondents in the impugned order that the petitioner submitted her application for compassionate appointment after three years of the death of the petitioner's father is, untenable and unsustainable. As and when the State Government is not in a position to provide compassionate appointment immediately after demise of the breadwinner of the family or at a reasonable time, they are not suppose to contend that the petition submitted after three years by the petitioner and as such, she is not entitled for consideration. ”

10. The learned Government Advocate for the respondents in support of his contention has placed a reliance on the order dated 12.06.2024 in WP.No.23314 of 2023 of a learned Single Judge of this Court. On going through the said order, this Court is of the opinion that the said order is not applicable to the facts of the present case.

11. The principle behind the compassionate appointment is to provide



a buffer, a cushion to the direct dependants of the deceased employee to cope with the loss. The purpose of providing compassionate appointment to the members of the deceased government servant is to render assistance to the family, which is found in indigent circumstances. The respondents are not supposed to defeat the claim of the dependants of the deceased family on technicalities or on the ground that the application was made beyond the stipulated time of 3 years. The respondents ought to have adopted a humane touch while considering the claim of the dependants of the deceased family for compassionate appointment.

12. It is appropriate to extract the observation of the High Court of **Andhra Pradesh in K.Udaykiran vs. State of Andhra Pradesh** reported in 2021 SCC OnLine AP 2009 at Paragraph Nos.15 and 20 as hereunder:

“15. The respondents have to understand the very purpose of providing compassionate appointment, which is meant for providing employment assistance to the dependants of the deceased employee, who died in harness and thereby to provide some relief to the family from undergoing financial sufferings. When the family of the deceased employee consisting of illiterate wife and minor child, since, they have no other source of livelihood after the untimely death of the



WEB COPY

bread winner of the family, the respondents should have been much more sympathetic and practical in considering the claim of the dependants of the deceased employee for compassionate appointment.

20. This Court expects from the respondents also such type of liberal approach in considering the claims of the dependants of the deceased employees for compassionate appointments. This court holds that the respondents shall consider the cases of the dependants of the employees died in harness with human touch without considering only technicalities.”

13. In this regard, it is worthwhile to refer the case in ***Balbir Kaur v. Steel Authority of India Limited*** reported in (2000) 6 SCC 493 wherein their Lordships (U.C. Benarjee, J speaking for the Bench) of the Hon'ble Supreme Court have 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



WEB COPY

circumstances. Hence, in considering the case for compassionate appointment, the authorities are supposed to adopt a human outlook.”

14. The Hon-ble Apex Court further held at Para No. 19 as extracted hereunder:

“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.”

15. In this regard, it is worthwhile to refer the case in ***Superintending Engineer v. V. Jaya*** reported in (2007) 6 Mad LJ 1011, wherein their Lordships comprising a Division Bench of this Court have held at Para No. 7 as extracted hereunder:

“7. However, in a case of request for appointment on compassionate ground, however, the Court, while exercising



WEB COPY

its jurisdiction under Article 226 of the Constitution of India, cannot ignore the very purpose of providing employment on compassionate ground to the dependant of an employee/government servant dying in harness in preference to anybody else as it is done so in order to mitigate the hardship to the family of the employee on account of his unexpected death while still in service. The concept of compassionate employment is intended to alleviate the distress of the family and it is for such purpose appointments are permissible and provided even in the rules and regulations and any rigid approach or too technical objections may defeat the very object of the scheme. It is for that purpose while considering the request for compassionate appointment; the authorities are expected to act as a Good Samaritan overlooking the cobwebs of technicalities.”

16. In the present case, admittedly, the first petitioner, who is the mother of the second petitioner, made a representation seeking for compassionate appointment on 20th March 1995. After attaining majority, the second petitioner made a representation dated 05.09.2003 for compassionate appointment. These facts are squarely covered in the order of the Division Bench of Madras High Court in ***P.Kasthuri vs. The Chief Engineer (Personnel) and another*** (stated supra). As such, the



W.P.No.31833 of 20--

representation submitted by the first petitioner is within the time and the representation submitted by the second petitioner is a consequential one and therefore, there is no substance in the contention of the respondents for rejecting the claim of the petitioners on the ground of delay.

17. For the aforesaid reasons and in the light of the settled position of law stated supra, the present Writ Petition is allowed and the proceedings in Na.Ka.41169/CA1/2014, dated 30.07.2019 issued by the first respondent is hereby set aside with a consequential direction to the respondents to appoint the second petitioner in any suitable post within a period of six weeks from the date of receipt of a copy of this order.

No costs.

28.11.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



W.P.No.31833 of 20--

To

1. The Director General of Police,
Kamarajar Salai,
Chennai - 4.
2. The Superintendent of Police,
Kancheepuram District.

WEB COPY



WEB COPY



W.P.No.31833 of 20--

BATTU DEVANAND.J.,
pvs

Pre-delivery order in

W.P.No.31833 of 2019

28.11.2024