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W.P. No. 30954 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 30954 of 2018

and

W.M.P. No. 36093 of 2018

M. Swetha

... Petitioner

Vs.

1.The District Collector,
Thiruvannamalai,
Thiruvannamalai District.

2.The Principal Chief Conservator of Forest,
(HOFF), Panagal Maligai,
Saidapet, Chennai – 600 015.

3.The Forest Officer,
Vellore Division,
Vellore, Vellore District.

4.The District Forest Officer,
Thiruvannamalai North Division,
C.C. Road, Pakmarpettai,
Sengunam Post, Polur – 606 803,
Thiruvannamalai District.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the proceedings of the fourth respondent in Na.Ka.3145/2018/M2 dated 30.06.2018 and quash the same and direct the fourth respondent to provide employment to the petitioner under compassionate grounds.



W.P. No. 30954 of 2018

For Petitioner : Mr. D. Balachandran
For Respondents : Mr. S. Rajesh,
Government Advocate

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ORDER

This Writ Petition has been filed seeking a writ of certiorari, to call for the records relating to the proceedings of the fourth respondent in Na.Ka.3145/2018/M2 dated 30.06.2018 and quash the same and direct the fourth respondent to provide employment to the petitioner under compassionate grounds.

2. The facts of the case are that,

one G.Moorthi, Forester died on 12.06.2012 while he was in service at Natanoor Forest Region, North Forest Region, Tiruvannamalai. His daughter Swetha who is the petitioner herein has requested for compassionate appointment on 23.09.2013. At that time, she was studying SSLC, she was born on 31.07.1999 and aged about 14 years at the time of submitting application for compassionate appointment. The application of the petitioner was rejected by the fourth respondent vide proceedings in Na.Ka.No.3145/2018/M2 dated 30.06.2018. The said proceedings are impugned in the present writ petition.

2.1 The reasons stated in the impugned order to reject the claim of the petitioner is that, as per G.O.No.96, Labour and Employment Exchange, dated 18.06.2012, the legal heir of the deceased government servant is eligible for compassionate appointment only those who have fully completed 18 years and that too the government servant must have died after 23.08.2005. It is further stated that



the petition has been received after three years of the death of the petitioner's father.

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3. Learned counsel for the petitioner would submit that, infact the mother of the petitioner has submitted application within a period of three years from the date of the death of the father of the petitioner, as at that time, the petitioner was not a major. Subsequently, the petitioner has become a major, she submitted an application immediately within three years of attaining the age of majority. Learned counsel further contends that the respondents failed to take into consideration of the aim and object for providing compassionate appointment in proper perspective and with erroneous reasons, the application of the petitioner was rejected and accordingly sought to set aside the impugned order by allowing the writ petition.

4. In support of his contention, the learned counsel for the petitioner has relied on the judgment dated 01.04.2024 of Division Bench of this Court and submits that the issue involved in the writ petition is squarely covered in the said judgment.

5. Learned Government Advocate appearing for the respondents submit that, admittedly at the time of making the application seeking compassionate appointment to the petitioner, she was only 14 years and therefore, at the time when she attained majority, three years period was over from the date of the death of the father of the petitioner. Therefore, compassionate appointment could not be considered,



application is made beyond three years period. Therefore, by following the G.O.No. 155, Labour and Employment Department dated 10.12.2014, the claim of the petitioner was considered and rejected. Learned counsel further contends that the order of rejection which was impugned in this writ petition ought not to have interfered and he sought to dismiss the writ petition.

6. Heard the learned counsel appearing on either side and perused the material available on record.

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 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. The second reason stated in the impugned order for rejection of the claim of the petitioner is that, the petitioner is aged 14 years at the time of submission of the application. On this aspect, this Court need not discuss further about the entitlement of the petitioner for her claim in the light of the judgment of the Division Bench of this Court in W.A. (MD) No. 479 of 2024.

9. While dealing with a writ petition, wherein a minor who has completed only 15 years and 6 months, approached this Court claiming compassionate appointment, and her claim was rejected by the respondents therein, learned Single Judge of this Court by order dated 16.11.2023 in W.P.(MD) No. 27247 of 2023 has allowed the said writ petition accepting the contention of the petitioner therein. Aggrieved by the order of the learned Single Judge in the said writ petition, the respondents therein have preferred an appeal in W.A.(MD) No.479 of 2024. After consideration of the contentions of both parties and looking into the relevant Rules applicable for compassionate appointment, the writ appeal was dismissed by the Division Bench, holding that the order of the learned Single Judge in directing the respondents to consider the application for extending the benefit of compassionate appointment to



the petitioners therein is flawless and the same is to be sustained. The relevant paragraphs in the said judgment of the Division Bench are extracted herein under: -

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“9.However, practically, in most of the cases hitherto the position was that, when such an employee dies, the son or daughter or the dependants other than the spouse would be minor. Therefore, it will take some years to reach the majority within which three years period from the date of death of the employee would be over. Therefore, beyond three years period even though the dependant or legal heirs would become eligible to seek for compassionate appointment based on the educational qualification they acquired, those cases would not be considered by citing three years period that was prevailing hitherto.

10.However, these difficulties having been considered and realized by the State Government, they have come forward to issue the said Rule with effect from 08.03.2023.

11.Rule 6 of the said Rule reads thus:

'6.Age limit.- (1) Notwithstanding anything contained in these rules governing the post for which appointment on compassionate grounds is to be made, on the date of application for appointment.

(a) the spouse of the deceased or medically invalidated Government servant or the parent of the deceased Government servant, must have completed fifty years of age; and

(b) the son, daughter, brother or sister of the deceased or medically invalidated Government servant must not have completed forty years of age.

(2) Notwithstanding anything contained in these



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W.P. No. 30954 of 2016

rules governing the post for which appointment on compassionate grounds is to be made, there shall be no minimum age limit for the applicant on the date of application for appointment. Provided that appointment shall not be provided unless the applicant completes eighteen years of age.'

12. In Rule 6 under the heading age limit, the maximum age has been prescribed, whereas insofar as the minimum age is concerned, the Rule making authority has consciously made sub-Rule (2) of Rule (6), where they have stated that there shall be no minimum age limit for the applicant on the date of application for appointment, provided that, appointment shall not be provided unless the applicant completes eighteen years of age.

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

10. The judgment of the Division Bench of this Court as stated supra, is squarely applicable to the present case. Accordingly, this Court is of the considered opinion that the order impugned in this writ petition is illegal, unjust and contrary to the aim and object of the compassionate appointment scheme and accordingly, it is liable to be quashed.

11. For the aforesaid reasons, this Writ Petition is allowed with the following direction:-

i) The order impugned in this writ petition in Na.Ka.3145/2018/M2 dated 30.06.2018 is hereby quashed.

ii) The respondents are directed to provide employment to the petitioner on compassionate ground, within a period of four months from the date of receipt of copy of this order.

12. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



W.P. No. 30954 of 2016

06.11.2024

Index : Yes/No

Neutral Citation : Yes/No

AT

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Thiruvannamalai District.
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(HOFF), Panagal Maligai,
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