



W.A.(MD)No.625 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.04.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

W.A(MD)No.625 of 2024

R.Vasantha

... Appellant

VS

**1.The State of Tamil Nadu,
represented by its Secretary,
Health and Family Welfare Department,
St.George Fort, Chennai – 600 009.**

**2.The Director,
O/o. Directorate of Medical Education,
Kilpauk, Chennai – 600 010.**

**3.The Dean,
Kanyakumari Government Medical College,
Asaripallam, Kanyakumari District.**

...Respondents

**PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside
the order of this Court dated 13.07.2023 passed in W.P(MD)No.4710 of
2021.**

**For Appellant : Mr.G.Mutharasu
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader**



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JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

The Writ Appeal is filed challenging the order, dated 13.07.2023 in W.P.(MD)No.4710 of 2021, whereby, the claim of the Writ Petitioner to appoint her son on compassionate ground due to the death of her husband was rejected.

2.The husband of the Writ Petitioner, R.Muthu Ramalingam, was initially appointed temporarily on 04.07.2005 on consolidated pay as Store Keeper. Subsequently, he was brought under regular time scale of pay with effect from 01.04.2007 vide G.O.(Ms)No.144, Health and Family Welfare (E2) Department, dated 30.04.2007 and later, his services were regularised as per G.O.Ms.No.218, Health and Family Welfare (AA2) Department, dated 09.09.2016 with effect from 01.04.2007. In the meanwhile, while in service, the appellant's husband died due to harness on 14.11.2008 leaving behind the appellant, two daughters and one son. The Writ Petitioner had submitted an application on 27.02.2009 seeking for appointment on



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compassionate ground. But, however, the said application came to be rejected, as her husband was working only on temporary basis. Since thereafter, the services of her husband came to be regularised, the appellant submitted a fresh alternate application seeking appointment on compassionate ground to her son on 11.04.2018, since her son attained majority in the year 2018. However, the application was rejected by an order of the third respondent, dated 28.04.2020, as the application was filed with an inordinate delay of 9½ years from the date of death of the employee and further, the submission of alternate application is not permissible. Challenging the same, the Writ Petitioner has approached the Writ Court.

3.The learned Judge, by the impugned order, dated 13.07.2023, rejected the claim of the Writ Petitioner on the ground that since in view of G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, the Writ Petitioner cannot make any alternate application for her son. Assailing the impugned order, the appellant is before this Court.

4.The learned Counsel appearing for the appellant argued that though the appellant had filed an application for compassionate appointment on



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27.02.2009, her application came to be rejected only on the ground that the services of her husband was only temporary, but however, due to subsequent regularisation granted after eight years, there is a change of circumstance and still the family is under penurious circumstance and since the appellant's son attained majority, she has made an alternate application seeking for appointment for her son on compassionate ground and the learned Judge has failed to consider this aspect and therefore, sought for interference of this Court.

5.The learned Additional Government Pleader appearing for the respondents contended that on the date of filing of the application by the appellant seeking for compassionate appointment, the services of the appellant's husband was only on temporary basis and in view of the rules in vogue, the appellant is not entitled to seek for compassionate appointment and further, the present alternate application submitted by the appellant seeking for appointment for her son is not permissible. The learned Additional Government Pleader contended that subsequent regularisation granted in the year 2016 has not brought about any change and the application filed by the appellant after nearly 9½ years cannot be considered



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for compassionate appointment, as the Government has issued G.O(Ms)No. 18, Labour and Employment (Q1) Department, dated 23.01.2020 with a comprehensive set of guidelines in respect of appointment on compassionate ground and sought for dismissal of the appeal.

6.Heard the submissions made on either side and perused the materials available on record.

7.The appellant's husband, R.Muthu Ramalingam, was appointed as Store Keeper on temporary basis in the third respondent office on 04.07.2005. While he was in service, he died on 14.11.2008 and the appellant has submitted an application on 27.02.2009 seeking for appointment on compassionate ground. As the services of the appellant's husband was only on temporary basis and the services were not regularised, the application submitted by the appellant for compassionate appointment was rejected. Subsequently, vide G.O.Ms.No.218, Health and Family Welfare (E2) Department, dated 09.09.2016, the services of the appellant's husband came to be regularised with effect from 01.04.2007. As the service came to be regularised on 09.09.2016 and the appellant's son attained



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majority in the year 2018, she submitted a fresh application on 11.04.2018 seeking for compassionate appointment for her son. As the fresh application was submitted after an inordinate delay of 9½ years from the date of death of her husband and further, as the submission of alternate application is not permissible, the third respondent by proceedings, dated 28.04.2020, rejected the application.

8.The compassionate appointment is provided under a scheme by which, the Government provides employment to a member of a deceased employee's family, who died while in service only to enable the family to tide over the sudden loss considering the penurious circumstances of the family at that time due to the death of the deceased employee. The compassionate appointment is not a vested right and the application seeking for compassionate appointment cannot be made after a long delay, which is not the purpose for which, the scheme of compassionate employment is provided.

9.It is useful to refer the decisions of the Hon'ble Supreme Court:

(1)***Umesh Kumar Nagpal vs State of Haryana and others***, reported



in (1994) 4 SCC 138, the relevant paragraphs are read as follows:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of



the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

.....

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. 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, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis."

(2)State of Himachal Pradesh and another vs Prakash Chand,

reported in ***(2019) 4 SCC 285***, the relevant paragraph is read as follows:

"10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to rewrite the terms of the Policy. It is well settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee."

(3)N.C.Santhosh vs State of Karnataka, reported in ***(2020) 7 SCC***

617, the relevant paragraphs are read as follows:



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“18. In the most recent judgment in State of H.P. v. Shashi Kumar [State of H.P. v. Shashi Kumar, (2019) 3 SCC 653 : (2019) 1 SCC (L&S) 542] the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the Bench, Dr D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy.

19. Applying the law governing compassionate appointment culled out from the abovesaid judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”

(4)Fertilizers and Chemicals Travancore Limited and others -vs-

Anushree K.B., reported in **2022 SCC OnLine SC 1331**, the relevant paragraphs are read as follows:

“18. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a



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post held by the deceased.

19. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.”

(5)State of West Bengal -vs- Debabrata Tiwari and others, reported in **2023 SCC OnLine SC 219**, the relevant paragraphs are read as follows:

“32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.



iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

33. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, **after** the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

34. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.

35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or



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the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.”

10.Further, the Government has issued G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, with a comprehensive set of guidelines, in respect of appointment on compassionate ground. The time limit for filing application, age and the submission of alternate application has been dealt with, which are extracted hereunder:

“TIME LIMIT TO PREPARE THE APPLICATION

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

**TIME 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.*



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(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 of 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.*

ALTERNATIVE APPLICATION

If the applicant (legal heir of deceased Government Servant) died after applying for compassionate ground appointment, an alternative application may be accepted from the another legal heir of the deceased Government Servant, subject to conditions prescribed for compassionate ground appointment.”

11. Therefore, in view of G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, which was in vogue at the time of consideration, any application for appointment on compassionate ground may be submitted within three years from the date of death of the Government servant and further, the alternate application can be submitted only if the applicant, who had earlier applied, had died after applying for the compassionate appointment. In the present case, the alternative application submitted by the appellant cannot be accepted, since the application filed earlier by her was rejected and now, the alternate application is filed for her son. Further, the application seeking for compassionate appointment has been filed with an inordinate delay of almost 10 years after the death of the



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deceased employee. As in view of the aforesaid proposition referred supra, the scheme of compassionate appointment is provided to a member of a deceased employee only to tide over the crisis considering the penurious situation and the application filed at this length of time with an inordinate delay after the appellant's son having been attained majority cannot be sustained.

12.Only by taking note of the above all circumstances, the learned Judge has arrived at a conclusion and of-course have rightly dismissed the Writ Petition, which needs no interference by this Court. Accordingly, the order of the learned Judge is sustained and in view of the same, the Writ Appeal stands dismissed. No costs.

[R.S.K., J] & [G.A.M., J]
08.04.2024

Internet :Yes/No
Index :Yes/No
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To

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- 1.The Secretary,
The State of Tamil Nadu,
Health and Family Welfare Department,
St.George Fort, Chennai – 600 009.
- 2.The Director,
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- 3.The Dean,
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AND

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Judgment made in
W.A(MD)No.625 of 2024

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