



W.A(MD)No.660 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.660 of 2024
and
CMP(MD)No.4765 of 2024**

1. The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Bridge Station Road,
Sellur, Madurai 2.

2. The Branch Manager,
Life Insurance Corporation of India,
Srivilliputhur Branch,
Virudhunagar District.

... Appellants

vs.

R.Prema

... Respondent

Prayer : Appeals filed under Clause 15 of the Letters Patent, against the orders dated 26.09.2023 made in W.P(MD)No.15105 of 2022.

For Appellants : Mr.K.Vinoharan
For Respondent : Mr.VR.Shanmuganathan



JUDGMENT

(Judgment of the Court was made by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order passed by the Writ Court, dated 26.09.2023, made in W.P(MD)No.15105 of 2022.

2. That, the respondent's husband one Raju, was working as an Administrative Officer in the 2nd appellant's office. While he was in service, he died on 18.07.2020, due to corona virus. He was survived by his mother, a senior citizen, his son, aged 17 years and the petitioner i.e., the wife.

3. On 20.08.2020, the respondent had given a request to the appellants, seeking compassionate appointment for her son, who attained majority on 16.09.2020.

4. Considering the said application, on 21.08.2020, a communication had been sent by the appellants to the respondent, to give age and educational proof certificates of the respondent.

5. Since those certificates were not readily available with the respondent and application had been made in respect of her son who became



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major and who is eligible also for getting compassionate appointment as per the educational qualification he secured, there had been communications and requests as well as representations by the respondent to seek such compassionate appointment to her son.

6. The same, since had not been considered, she filed the said writ petition seeking for a Writ of Mandamus.

7. During the pendency of the said writ petition, on 26.07.2023, the 1st appellant passed an order, stating that the respondent being the spouse of the deceased employee, was ineligible for compassionate appointment and all the children were minors at the time of death of the employee. Therefore, the application submitted by the respondent for seeking compassionate appointment to her first son, cannot be considered and therefore, accordingly it was rejected. The said rejection order, since has been passed on 26.07.2023, the prayer in the writ petition has got amended, for challenging the said order, that is how, the said writ petition was decided by the Writ Court, through the impugned order, where, the learned Judge having considered all these factual matrix, had come to the conclusion that, the son of the respondent is eligible to get compassionate appointment. Therefore, the order dated 26.07.2023, passed



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by the appellant department, was set aside and a direction was given by the learned Judge to the appellant department to consider the request of the respondent for giving compassionate appointment to her son within a time frame. Aggrieved over the same, the present appeal has been directed.

8. Heard Mr.K.Vinoharan, learned counsel appearing for the appellants, who relies upon the rule called, LIC Recruitment (of Class III and Class IV Staff) Instructions, 1993, where, he also relied upon Rule 21, Clause (v)(c), where, it is stated that upto one year from the date of attaining majority by the eldest surviving child, his/her application will be entertained, where the spouse of the deceased employee is ineligible for compassionate appointment and all children are minor on the date of death of the employee. This will not apply when the spouse is gainfully employed. This circular since had been issued from 01.01.2018, according to which, if the spouse is eligible to get employment, only the spouse should apply and the spouse's application alone shall be considered for giving compassionate appointment.

9. In the case, where the spouse is ineligible to seek for compassionate appointment, only in those cases, within one year from the date of attaining majority, his or her case would be considered as per the said rule.



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Therefore, the learned counsel for the appellants would submit that, in the present case, the respondent, being the spouse of the deceased employee, has become eligible to claim the compassionate appointment. Therefore, the certificates regarding the age and educational qualification since had been asked for by the appellant department, that should have been produced. However, without producing the same, she evaded from producing the said certificates, only in order to get the compassionate appointment to her son, which is impermissible under the rule, he contended. Mainly on that ground since the claim made by the respondent for compassionate appointment of her son, had been rejected, it has been interfered with without any plausible reason by the learned Judge. Therefore, the order impugned, is liable to be interfered with, he contended.

10. Heard Mr.VR.Shanmuganathan, learned counsel appearing for the respondent also. We have gone through the materials placed before this Court.

11. It is an undisputed fact that, on 18.07.2020, the husband of the respondent died due to corona virus and immediately, an application had been made by the respondent being the spouse, seeking compassionate appointment to her son, who even though was minor at the time of death of the employee,



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however, within two months period i.e., on 16.09.2020, became major.

Therefore, he has become eligible to seek for such compassionate appointment and hence, the application was submitted in this regard by the respondent. When it was considered, the appellant department had issued a communication on 21.08.2020, seeking certificates of the spouse i.e., the respondent alone.

12. Since those certificates were not available with the respondent/spouse and she also wanted the job on compassionate grounds to be extended to her son, the certificates pertaining to the son had been sent and several communications had been issued in this regard, on several dates, by way of representations on behalf of the respondent and her son.

13. Since no fruitful result had come from the appellant department, she approached this Court, filed the said writ petition and during the pendency of the writ petition, the order dated 26.07.2023, was issued.

14. On perusal of the said order, we find that, the reason cited by the appellant department for rejecting such a plea, made by the respondent to get compassionate appointment to her son, is that, the spouse is not eligible to get compassionate appointment, because, she could not produce the certificates and



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therefore, the children, who were minors at the time of the death of the employee, were also not eligible for consideration and accordingly, their plea was rejected.

15. In this context, it is to be noted that, the employee died on 18.07.2020. Application immediately filed and the first son attained majority on 16.09.2020 and consideration had been made by the appellant department and communication or rejection order had been passed only on 26.07.2023 i.e., almost after three years. In the meanwhile, the respondent's son had already attained the majority and therefore, he was very much eligible to seek for such compassionate appointment.

16. When that being so, the reason cited in the said order dated 26.07.2023, that, on the date of the death of the employee, the children since were minors, therefore, it cannot be considered, is unsustainable, because, the consideration that has been made by the appellant department is only later on. Moreover, it is not the case where the minor child, who continues to be a minor even for three years from the date of death of the employee, seeks such claim of compassionate appointment after attaining majority after several years. In those cases, such kind of rejection could be possible. However, in the present case,



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within two months from the date of death of the employee, since the respondent's son has become major, from that date, he is eligible to seek for compassionate appointment, that too, at the time of consideration of the application, the said reason given by the appellant department in the order dated 26.07.2023, is totally unsustainable.

17. Even though the learned counsel appearing for the appellant has made an attempt to say further that, the family is not in indigent circumstances and it has to be proved or substantiated by the respondent while making such an application or subsequent also that, the family still continues in penurious circumstances, therefore, on that ground also, the claim made by the respondent was rejected, but no such reason had been stated in the said order dated 26.07.2023.

18. Moreover, by communication dated 21.08.2020, the appellant department sought for the certificates only with regard to the age as well as the educational qualification, that means, the department having satisfied with the penurious circumstances of the family only, sought for those certificates. Therefore, such a stand cannot be changed by the appellant department and that kind of reasons cannot be added, which is not part and parcel of the order impugned dated 26.07.2023, before the Writ Court.



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19. Therefore, it is a settled law that, by filing affidavit or counter affidavit, the parties cannot improve their case from the order originally passed by them, which was put under challenge before the Court of law. Such kind of reasons cannot be added without any substantiation also. Therefore, this Court is not impressed with the said submission made by the learned counsel appearing for the appellants.

20. Therefore, for all these reasons and the reasons given by the learned Judge in the order impugned, the conclusion reached by the learned Judge through the impugned order, is to be accepted. Accordingly, the order impugned, is sustained. Resultantly, the Writ Appeal fails. Hence, it is liable to be dismissed and accordingly, dismissed. The order passed by the learned Judge shall be complied with, within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Neutral Citation : Yes / No
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(R.S.K., J.)

(G.A.M., J.)

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