



W.A.(MD)No.832 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2024

CORAM

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

**W.A(MD)No.832 of 2024
and
C.M.P.(MD)Nos.6178 and 6179 of 2024**

B.Suga Solai Raja

... Appellant

vs

**1.The District Collector,
Pudukottai District,
Collectorate, Pudukottai.**

**2.The Block Development Officer,
Aranthangi-Village Panchayat,
Block Development Office,
Aranthangi, Pudukottai District.**

...Respondents

**PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside
the order of this Court dated 18.02.2022 passed in W.P(MD)No.12653 of
2021.**

For Appellant : Mr.V.Kannan

**For Respondents : Mr.N.Sathish Kumar
Additional Government Pleader**



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JUDGMENT

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

This Writ Appeal is filed challenging the order, dated 18.02.2022 in W.P.(MD)No.12653 of 2022, whereby, the claim of the petitioner to provide compassionate appointment as Junior Assistant or any other suitable post in view of the death of his father, was rejected.

2.The short facts involved in the appeal is that the Writ Petitioner's father G.Balasubramanian worked as a Block Development Officer in Aranthangi Panchayat Union Office, Pudukottai District, died on 04.01.2016, while he was in service. His mother, predeceased his father on 02.07.2014 and as such, the Writ Petitioner along with one married and another unmarried sisters faced severe financial crises. On the date of death of his father, the Writ Petitioner was a minor and submitted an application on 10.10.2018 seeking for compassionate appointment. However, the District Collector/first respondent by order, dated 18.02.2019 rejected the claim of the Writ Petitioner on the ground that the Writ petitioner has not attained the age of majority on the date of death of his father and therefore,



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he again submitted an application on 28.09.2019 after attaining the age of majority. But, however, the same was also dismissed by order, dated 28.09.2020 on the ground that the application has not been made within three years from the date of death of the father. Challenging the rejection of the application for compassionate appointment, the appellant preferred the Writ Petition.

3.The learned Judge dismissed the Writ Petition holding that the scheme of compassionate appointment is to be implemented strictly in compliance with the scheme in vogue and as the appellant's father died in the year 2016 and application was filed after three years already more than five years have lapsed, the Writ Petitioner cannot claim for appointment as a matter of right. Challenging the impugned order passed in the Writ Petition, the appellant is before this Court.

4.The learned Counsel appearing for the appellant contended that initially, the application for compassionate appointment was filed on 10.10.2018 itself, which was rejected, as the appellant was a minor at that time and therefore, the second application was filed seeking compassionate



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appointment on 28.09.2020, but still the second application also was rejected on the ground that the application was not made within three years. The learned Counsel further contended that the appellant has lost both his parents and his family is in penurious circumstances and the object of providing compassionate employment itself is only to bail out the deceased family from the penurious circumstances due to the sudden death of the employee and therefore, the order passed rejecting the claim is against the very intention of the scheme.

5.The learned Additional Government Pleader appearing for the respondents submitted that any application for compassionate appointment can be considered only as per the scheme framed for providing compassionate appointment and since admittedly, the appellant was a minor at the time of death of the employee and the application filed seeking compassionate appointment was not within the period of three years as mandated under the Government Order, his application has rightly been rejected, which needs no interference and therefore, he sought for dismissal of this appeal.



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6. Heard the learned Counsels on either side and perused the materials available on record.

7. The appellant's father, who worked as Block Development Officer in the Aranthangi Panchayat Union Office, Pudukottai, died while in service on 04.01.2016. Admittedly, on the date of death of the appellant's father, he was a minor and his earlier application filed was rejected on that ground and the second application was submitted by the appellant after attaining majority on 28.09.2020 seeking compassionate appointment. As the application submitted was beyond the period of three years and the terms under the compassionate appointment scheme mandate that any application seeking compassionate appointment has to be filed within a period of three years, the same came to be rejected by orders of the first respondent.

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



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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



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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.”



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(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:

“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.”



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(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 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:



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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



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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 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



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of guidelines, in respect of appointment on compassionate ground. The time limit for filing application and age 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.*

(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.*

11. Therefore, in view of G.O.(Ms).No.18, Labour and Employment (Q1) Department, dated 23.01.2020, which is in vogue at the time of consideration of the application submitted by the appellant, any application seeking appointment on compassionate ground would be submitted within a period of three years from the date of death of the Government servant. Further, the issue regarding submitting the application within the specified



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period of three years was settled by the Hon'ble Full Bench of this Court in W.P(MD)No.7010 of 2011 and batch, dated 11.03.2020. In the instant case, admittedly, the application seeking compassionate appointment has not been submitted within the period of three years, but however, has been submitted after that period. Further, as more than five years had passed from the date of death of the appellant's father, the learned Judge by taking note of the fact that the scheme of compassionate appointment is provided to a member of the deceased family only to tide over the crisis considering the penurious situation and having found that the application was not filed within the time prescribed under the scheme, has rightly dismissed the Writ Petition, which need no interference. Accordingly, the order passed by the Writ Court is sustained and the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K., J] & [G.A.M., J]
05.06.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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To

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1.The District Collector,
Pudukottai District,
Collectorate, Pudukottai.

2.The Block Development Officer,
Aranthangi-Village Panchayat,
Block Development Office,
Aranthangi, Pudukottai District.



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Judgment made in
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