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W.A.No.3141 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. SARAVANAN

W.A.No.3141 of 2021

R.Ziyaullah

... Appellant

Vs.

The Commissioner,
Krishnagiri Municipality,
Krishnagiri.

.. Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 04.03.2021 in W.P.No.22128 of 2019 on the file of this Court.

For Appellant : M/s.Karthikaa Ashok

For Respondent : Mrs.V.Yamuna Devi
Special Government Pleader



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J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge, dated 04.03.2021, dismissing the writ petition filed by the appellant in W.P.No.22128 of 2019, wherein, the appellant prayed for quashing the order passed by the respondent dated 27.03.2018 rejecting the application filed by the appellant for compassionate appointment dated 23.09.2015.

2. There is no dispute on facts. The appellant's father by name A.N.Riffagathullah was working as Junior Assistant in the respondent Municipality. He died on 07.02.2010 while he was in service. At the time of death of the father of appellant, the appellant was only 11 years old. The appellant's mother did not apply for appointment on compassionate grounds and it is stated that, due to her illness, she did not apply for appointment on compassionate grounds. The appellant, even before attaining majority, filed an application along with enclosures like educational certificates, etc.,



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seeking appointment on compassionate grounds, within three years. The said application was rejected by a communication dated 05.11.2013 on the ground that the appellant had not completed 18 years on the date of application. Therefore, the appellant on completion of 18 years, once again, submitted an application on 23.09.2015. On the ground that the appellant had not submitted his application within three years and that the appellant had not attained majority within three years from the date of death of the employee, the respondent rejected the application of the appellant. Challenging the said order, the writ petition was filed by the appellant.

3.Learned Single Judge of this Court, after recording the facts which are not in dispute, held that the appellant is not entitled to compassionate appointment in terms of the judgments of the Hon'ble Supreme Court and the Division Bench of this Court. It is held that the application for compassionate appointment should be filed within three years and the application of minor within three years when there are others in the family cannot be entertained. After referring to the object of providing compassionate appointment, learned Single Judge held that the appellant is



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not entitled to the relief and dismissed the writ petition filed by the appellant.

4. Aggrieved by the order of the learned Single Judge, the above Writ Appeal is filed by the writ petitioner.

5. Learned counsel appearing for the appellant relied upon a few judgments to support her contention that an application which was filed in time but rejected on the ground that the appellant had not completed 18 years on the date of application, has to be considered. The learned counsel also relied upon a few judgments which would support her argument that the appellant, who is living in a state of indigence, is entitled to get the relief. In support of her argument, the learned counsel also produced a copy of the Certificate issued to the appellant showing that the family of the appellant is living in penury and their annual income is around Rs.1,21,000/-.



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6.Learned Special Government Pleader appearing for the respondent relied upon a judgment of this Court authored by one of us (Hon'ble Mr. Justice S.S.Sundar) in the case of ***Periyaraj v. State represented by Chief Secretary, Social Welfare Department and others [W.A.(MD) No.1435 of 2023, dated 05.09.2023]***, wherein, this Court only held that, if the Scheme framed by the Government for compassionate appointment does not permit entertaining an application by a dependent after attaining majority, then such an application cannot be considered. In the said judgment, this Court also relied upon a few other judgments of Hon'ble Supreme Court. Learned Special Government Pleader further relied upon a judgment of a Division Bench of this Court in ***The Inspector General of Prisons and another v. P.Marimuthu*** reported in ***2016 (5) CTC 125*** reiterating the same position. She relied upon the judgment of the Hon'ble Supreme Court in ***Sanjay Kumar v. State of Bihar and others*** reported in ***(2000) 7 SCC 192***, wherein, in an identical situation, the Hon'ble Supreme Court, while rejecting the case of dependent, held that there cannot be reservation of a vacancy till such time the petitioner becomes a major after a number of



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years, as compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread winner who had left the family in penury and without any means of livelihood. The Hon'ble Supreme Court, taking note of the fact that the application was submitted by the minor within three years and later, it was renewed after attaining majority, held that, in the absence of enabling provisions, compassionate appointment cannot be given.

7.However, learned Special Government Pleader has also brought to our notice the recent Government Order issued vide G.O.(Ms).No.33, Labour Welfare and Skill Development (Q1) Department, dated 08.03.2023. The Government, in exercise of its power under Article 309 of the Constitution of India, have made the Rules called Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023. It is also admitted that the said Government Order is adopted by all the Government Departments. Rule 17 of the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023, reads as follows :



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“17.Power to relax.— Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reason to be recorded in writing, relax any of the provisions of these rules with respect to any person where the operation of these rules causes any hardship: Provided that educational qualification prescribed for appointment to any post shall not be relaxed.”

8.The Government has now retained the power to relax any provision of the Rules with respect to any person where the operation of this Rules would cause any hardship. All the facts of the present case is an example where the petitioner who is otherwise entitled to appointment on compassionate grounds, was denied employment only on the ground that his application was originally filed when he was minor and that the latter application was beyond the period of three years. When a Government employee dies leaving behind a son who is below 15 years old, there is no chance of minor being considered after attaining majority. When the fact that the family of the appellant is still in trouble and the Certificate issued by the Tahsildar shows that the appellant, along with his mother, is



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struggling for their livelihood, the Government, who has retained the power of relaxation specifically to deal with such situations as in the present case, has to consider the case of appellant. The Government is expected to consider the request of the appellant in the light of the power under Rule 17 of the Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023.

9.At this juncture, learned Special Government Pleader appearing for the respondent submitted that the said Rules was introduced only on 08.03.2023 and that it has no retrospective effect. It is further stated that the said Rules is not applicable to the local bodies where the appellant's father was employed. This contention of the learned Special Government Pleader that the Government Order is not applicable to the respondent Municipality, is not fair, as the Government Order itself was produced by the learned Special Government Pleader to support her argument that no Rule is provided to entertain the application of minor after attaining majority, if the application is filed beyond the period of three years from the date of death of employee.



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Government has earlier entertained applications even beyond the period of three years on minor dependant attaining majority. In such circumstances, this Court is of the view that the Rule can be applied to cases which are pending. Further, there is no delay in challenging the order impugned. Therefore, having regard to the view expressed by us, **this Writ Appeal is allowed** and the order of the learned Single Judge, dated 04.03.2021, is set aside. The matter is remitted to the respondent and the respondent shall submit a proposal to the Government for relaxing the Rule in the case of appellant, within a period of two weeks from the date of receipt of a copy of the order. The Government, though not a party, is directed to consider the proposal of the respondent and pass appropriate orders on the same, within a period of six weeks from the date of receipt of such proposal. No costs.

(S.S.S.R., J.) (C.S.N., J.)
13.03.2025

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S.S. SUNDAR, J.
and
C. SARAVANAN, J.

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To

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Krishnagiri Municipality,
Krishnagiri.

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