

W.A.(MD)No.365 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.365 of 2024

and

C.M.P.(MD)Nos.3176 and 4968 of 2024

1.The District Collector,
Tirunelveli, Tirunelveli District.

2.The District Collector,
Tenkasi, Tenkasi District.

... Appellants

Vs.

1.G.Mariammal

2.The Joint Director of Ex-Servicemen Welfare,
No.22, Raja Muthiah Salai,
Chennai-600 003.

3.The Assistant Director of Ex-Servicemen Welfare,
Military Lines,
Tirunelveli-627 002.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.22257 of 2022, dated 26.09.2023.

For Appellants	:Mr.Veerakathiravan Additional Advocate General assisted by M/s.D.Farjana Ghoushia Special Government Pleader
For R1	:Mr.N.Dilip Kumar



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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The writ appeal is filed by the respondents 1 and 2 in the writ petition against the order dated 26.09.2023 passed in W.P.(MD)No.22257 of 2022.

2.The writ petition was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order dated 13.08.2022 passed by the second respondent and consequently, to direct the respondents 1 to 4 to provide the petitioner the post of Junior Assistant taking into account the date of death of her husband, her seniority in the compassionate appointment diary and her educational qualification, at par with her juniors who were given compassionate appointment as Junior Assistant overlooking the seniority of the petitioner, with retrospective effect from the date of joining of her juniors, in a time bound manner.

3. The brief facts as stated in the writ petition are that the writ petitioner's husband was working as a Sepoy in the Indian Army and he died in service on 28.07.2013. Within a period of three years, on 23.05.2016, the writ petitioner made an application seeking compassionate appointment to the District Collector,



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Tirunelveli. There is a scheme for providing compassionate appointment in the State of Tamil Nadu for dependents of defence personnel, who died in harness in any one of the Government Departments in Group “C” and “D” posts. The State follows a procedure by maintaining separate diaries in the office of the District Collectors and appointments are being provided taking into account the date of death of the employee and seniority in maintained in diary and educational qualification of the dependent applicant. Such a diary is also maintained at the office of the District Collector, Tirunelveli. The writ petitioner's application for compassionate appointment, dated 23.05.2016, was duly received in the office of the District Collector, Tirunelveli and the petitioner's name was registered as No.2 in the said diary. However, the offer of compassionate appointment was not forthcoming from the first respondent for several years and the writ petitioner was compelled to make several repeated representations to the various authorities including the Hon'ble Chief Minister of Tamil Nadu to provide with compassionate appointment considering the indigent circumstances and condition of living. On 21.10.2019, she was summoned to appear before the fourth respondent and the petitioner appeared wherein it was informed that there was no vacancy for the post of Junior Assistant in Tirunelveli District and vacancies for the post of Record Clerk alone were available. In the meanwhile, the District of



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Tirunelveli was bifurcated with effect from 22.11.2019, thereby the new District of Tenkasi was created and the process of giving compassionate appointment to the dependents of the government employees commenced from the Tenkasi District as well. Left with no other option, the writ petitioner accepted the post of Record Clerk and was duly appointed on 16.12.2021 by the District Collector, Tenkasi. The contention of the petitioner is that the respondent's office fully misguided the petitioner, hence without any option had given an undertaking on 12.10.2021 to accept the post of Record Clerk and also given undertaking she would not approach the Court at later point of time seeking appointment as Junior Assistant. Thereafter, the writ petitioner came to understand that the writ petitioner's juniors in the compassionate appointment diary and those who were less qualified than the writ petitioner were given the post of Junior Assistant or equivalent posts under the first respondent on 08.11.2021, in the same year, in which the writ petitioner was appointed. Whereas the writ petitioner was offered the post of Record Clerk which is a lower post. Hence, the writ petitioner submitted a representation, dated 15.11.2021, seeking to provide her with the post of Junior Assistant at par with her junior and the 2nd respondent, vide communication, dated 14.12.2021 informed that there was no vacancy for the post of Junior Assistant as sanctioned by the Commissionerate of Chennai, Revenue



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Administration. Thereafter, an appointment order was issued for the post of Record Clerk by the 1st respondent on 16.12.2021 and the writ petitioner was posted in the office of the Tahsildar, Tenkasi. Not being fully satisfied by the offer of appointment provided by the District Collector, Tenkasi, the writ petitioner sought for information under the Right to Information Act from the respondents 1 and 4 with respect to the availability of vacancies to the post of Junior Assistant during the period between 2019 and 2022. Since the juniors in the appointment diary were provided with the post of Junior Assistant, overlooking the seniority of the writ petitioner, she made a representation on 04.05.2022 and filed W.P(MD)No.12054 of 2022 and the Writ Court by order, dated 16.06.2022, directed the first respondent therein to consider the petitioner's representation, dated 04.05.2022, within a period of three months. Pursuant to the same, the impugned order in the writ petition, dated 13.08.2022, was passed by the second respondent rejecting the claim of the writ petitioner seeking appointment in the post of Junior Assistant. Hence, the writ petition was filed.

4. The fourth respondent in the writ petition has filed counter affidavit stating that the writ petitioner's husband died in harness on 28.07.2013 and the writ petitioner applied for appointment in the Government service on



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compassionate grounds on 23.05.2016, based on the application the petitioner's name was entered in the diary maintained in the office of the District Collector, Tirunelveli and she was placed in 2nd rank. However, pursuant to the bifurcation of Tirunelveli District into the Districts of Tirunelveli and Tenkasi in the year 2019, the writ petitioner's area of living was demarcated within the jurisdiction of the District of Tenkasi and as a result of which, her application was forwarded to the bifurcated Tenkasi District. There had been no vacancy in the post of Junior Assistant at the time when the writ petitioner's application seeking compassionate appointment, dated 23.05.2016, was considered by the 2nd respondent District Collector, Thenkasi. The writ petitioner had given an undertaking that she will never ever claim the post of Junior Assistant in future either personally to the respondent concerned or before any Court of law. Only on the basis of the said undertaking, the writ petitioner had been accommodated in the post of Record Clerk and hence, the writ petitioner is not entitled to claim the post of Junior Assistant. Hence, the 4th respondent prayed to dismiss the writ petition.

5. After hearing the rival submissions, the Writ Court quashed the order, dated 13.08.2022, passed by the second respondent and subsequently, directed the second respondent to appoint the writ petitioner in the post of Junior Assistant



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taking into account her seniority in the compassionate appointment diary and her educational qualification at par with her juniors, who were given compassionate appointment as Junior Assistant overlooking the seniority of the writ petitioner with retrospective effect from the date of joining of her juniors, within a period of eight weeks. Aggrieved over the same, the respondents 1 and 2 in the writ petition have preferred the present writ appeal.

6. Heard Mr.Veera Kathiravan, Learned Additional Advocate General assisted by M/s.D.Farjana Ghoushia, Learned Special Government Pleader appearing for the appellants and Mr.N.Dilip Kumar, Learned Counsel appearing for the 1st respondent and perused the records.

7. The 1st respondent herein / writ petitioner has circulated the RTI application, dated 14.10.2022, 1st appeal to Joint Commissioner, dated 19.11.2022 and 2nd appeal to Tamil Nadu Information Commission, dated 22.12.2022, before this Court. He has also enclosed the RTI reply, dated 31.05.2023.

8. The 2nd respondent herein has filed counter affidavit in the writ appeal stating that according to G.O.Ms.No.1218, Public (Ex-Servicemen) Department,



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dated 03.09.1999 and G.O.Ms.No.211, Public (Ex-Servicemen) Department, dated 07.03.2012, the widows/dependents of serving soldiers who died in harness are given compassionate appointment by the respective District Collectors. The application for compassionate ground appointment is accepted only from the dependents of deceased who were native of Tamil Nadu by birth. The application received along with all relevant documents are verified for genuineness by the concerned District Ex-Servicemen's Office, then the verified documents are forwarded to the Directorate of Ex-Servicemen's Welfare where all the applications are scrutinised for eligibility criteria and genuineness. On confirmation, the set of documents are then forwarded to the concerned District Collector where dependants belonged for including the dependents particulars in the waiting list of applicants awaiting compassionate appointment. After the receipt of application, the District Collector is the sole authority for their appointment and disposal at the concerned District. As per G.O.Ms.No.211, Public (Ex-Servicemen) Department, dated 07.03.2012, the District Collector is the competent authority to provide compassionate appointment to the dependents as per the seniority in the waiting list as and when the vacancies arise under his jurisdiction. The role of Department of Ex-Servicemen Welfare is only to collect the applications, verify their genuineness and then forward it to the concerned



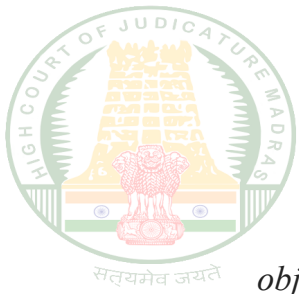
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District Collector. The Department per se does not have any authority to provide compassionate appointment. The concerned District Collectorate maintains a Special register for applicants awaiting compassionate appointment in a prescribed seniority based on which appointment is given by them. Therefore, the 2nd respondent herein submitted that the Department of Ex-Servicemen Welfare has no authority for providing compassionate appointment to the dependents of the deceased soldiers.

9. The Learned Additional Advocate General appearing for the appellants relied on the judgment rendered by the Division Bench of this Court in the case of ***The District Collector and 5 others Vs. A.Karthikeyan***, in W.A.(MD)No.1280 of 2019, dated 16.11.2023, wherein it is held as under:

“9. The Scheme of compassionate appointment is a concession and not an absolute right. Scheme is not a method of appointment. All the appointments are to be made under the constitutional Scheme and equal opportunity in public appointment is the constitutional mandate. Under the Scheme of compassionate appointment, there is no merit assessment and the eligibility and suitability are not considered by the authorities. Mere death of an employee was taken into consideration for extending the benefit of the Scheme of appointment with an object to mitigate the circumstances arising on account of sudden death of an employee, who may be the breadwinner of the family. That being the



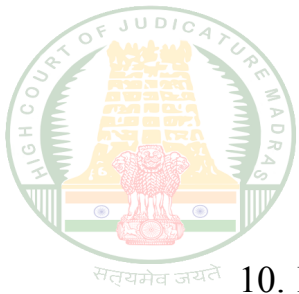
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object, the penurious circumstances prevailing on account of the death of the employee is to be considered by the authorities and other conditions stipulated are also to be complied with.

10. Scheme being a special one, to be implemented scrupulously following the terms and conditions. Large scale compassionate appointments, if made would cause infringement of the rights of lakhs of youths, who all are longing to secure public employment through open competitive process. Therefore, the Government earmarked limited number of posts for providing compassionate appointment. List of seniority is maintained for the purpose of providing appointment on compassionate grounds. Scope of judicial review to grant the relief of compassionate appointment is limited and that being principles we are of the considered opinion that the first respondent is not entitled to seek second appointment on compassionate ground. He was already appointed on compassionate ground to the post of the Record Clerk based on his application and he has accepted the said post and is serving for more than 15 years. Therefore, the second application submitted by the respondent seeking appointment to the post of Junior Assistant on compassionate ground is not maintainable under the Scheme and therefore, the learned Single Judge has erred in granting the relief.

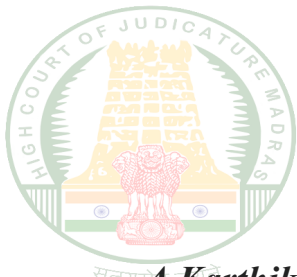
11. Consequently, the order impugned dated 12.12.2018, passed in W.P.(MD) No.4655 of 2013 is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.”



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10. In the present case, the date of death of the employee is on 28.07.2013 and the petitioner submitted an application on 23.05.2016 which is well within three years, then the petitioner was kept in Seniority No.2. Thereafter the petitioner submitted several repeated representations to the various authorities including to Hon'ble Chief Minister Cell on 17.06.2021, Member of Parliament on 10.11.2021. When the series of representations were submitted by the petitioner, the District Collector, Tenkasi had offered the vacancy post of Record Clerk with an undertaking from the petitioner. The petitioner having accepted the offer and having given an undertaking that she will not claim the post of Junior Assistant or file a petition claiming Junior Assistant post, cannot now go back against such undertaking. When the petitioner is dire need of financial assistance had submitted repeated representations, when the appellants had considered the dire need and the urgency of the petitioner and had on offered the Record Clerk post, now the petitioner cannot turn around and claim Junior Assistant post. The petitioner is very well aware that the petitioner's name is in the seniority, then the petitioner ought to have waited for the seniority and for her chance to come. Further it is seen the Tirunelveli District is bifurcated as Tirunelveli District and Tenkasi District, the petitioner was kept under the jurisdiction of Tenkasi District. Furthermore, concurring with the aforesaid judgment rendered in



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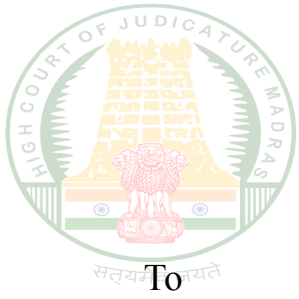
A.Karthikeyan's case, this Court is of the considered opinion that since the 1st respondent herein / writ petitioner is already appointed as Record Clerk, which itself is a concession, she cannot seek another concession to be appointed as Junior Assistant. Therefore, the order passed by the Writ Court is set aside.

11. With the above said observations, the writ appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] [S.S.Y., J.]
04.04.2025

Index : Yes / No

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