

A LOCAL ADMINISTRATION DEPARTMENT & ANR.

v.

M. SELVANAYAGAM @ KUMARAVELU

(Civil Appeal No(s) 2206 of 2006)

APRIL 5, 2011

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[AFTAB ALAM AND R. M. LODHA, JJ.]

**SERVICE LAW:**

C *Compassionate appointment – Son of deceased*  
D *employee applying for appointment after 7½ years of the*  
E *death of his father after he attained majority – Wife of*  
F *deceased never applied for appointment – Held: In such a*  
G *case, the appointment cannot be said to sub-serve the basic*  
H *object and purpose of the scheme – It would rather appear*  
*that on attaining majority, the applicant staked his claim on*  
*the basis that his father was an employee of the Municipality*  
*and he had died while in service – In the facts of the case,*  
*the claim of the appellant did not come under the scheme of*  
*compassionate appointments – An appointment made many*  
*years after the death of the employee or without due*  
*consideration of the financial resources available to his/her*  
*dependents and the financial deprivation caused to the*  
*dependents as a result of his death, simply because the*  
*claimant happened to be one of the dependents of the*  
*deceased employee, would be directly in conflict with Articles*  
*14 and 16 of the Constitution and, therefore, quite bad and*  
*illegal – In dealing with cases of compassionate appointment,*  
*it is imperative to keep this vital aspect in mind – Constitution*  
*of India, 1950 – Articles 14 and 16.*

G **The father of the respondent died while in service of**  
H **the appellant Municipality. The respondent was a minor**  
**at that time and his mother did not apply for the**  
**appointment. On attaining the age of majority he filed the**

application, which was after 7½ years of the death of his father. The employers declined the appointment. His writ petition was dismissed by the Single Judge, but allowed by the Division Bench of the High Court with a direction to the employers to appoint him within three months.

Allowing the appeal filed by the employers, the Court

HELD: 1.1. In the order dated April 19, 2000, two reasons were assigned for rejecting the respondent's claim for appointment on compassionate basis. First, on the death of the employee, his wife and the mother of the respondent did not make any request for appointment and this showed that the demise of the employee concerned had not caused a very serious financial crisis in the family. Secondly, following the death of the employee, the family was given Rs.26,674/- as terminal benefits besides family pension to the widow. Thus, the dependents of the deceased employee were not left completely without any financial resources. The second reason given for not accepting the respondent's claim was rightly rejected by the Division Bench of the High Court. [para 5-6] [249-A-E]

*Balbir Kaur and another vs. Steel Authority of India Ltd. and others*, 2000 (3) SCR 1053 =AIR 2000 SC 1596 – relied on.

1.2. However, the view taken by the Division Bench of the High Court on the first issue is completely divorced from the object and purpose of the scheme of compassionate appointments. The High Court accepted the respondent's explanation for her mother not applying for a job and held that it could not be a ground for denying appointment to him on compassionate basis. The explanation that his mother was suffering from anemia and hypo tension is an afterthought and completely unacceptable. It has been said a number of times earlier

A but it needs to be recalled here that an appointment  
 made many years after the death of the employee or  
 without due consideration of the financial resources  
 available to his/her dependents and the financial  
 deprivation caused to the dependents as a result of his  
 B death, simply because the claimant happened to be one  
 of the dependents of the deceased employee, would be  
 directly in conflict with Articles 14 and 16 of the  
 Constitution and, therefore, quite bad and illegal. In  
 dealing with cases of compassionate appointment, it is  
 C imperative to keep this vital aspect in mind. [para 6-7] [249-  
 E-F; 250-F-H; 251-A-B]

1.3. Ideally, the appointment on compassionate basis  
 should be made without any loss of time but having  
 regard to the delays in the administrative process and  
 D several other relevant factors such as the number of  
 already pending claims under the scheme and availability  
 of vacancies etc. normally the appointment may come  
 after several months or even after two to three years. It  
 is not possible to lay down a rigid time limit within which  
 E appointment on compassionate grounds must be made  
 but what needs to be emphasised is that such an  
 appointment must have some bearing on the object of the  
 scheme. [para 8] [251-D-E]

F 1.4. In the instant case, the respondent was only 11  
 years old at the time of the death of his father. The first  
 application for his appointment was made on July 2, 1993,  
 even while he was a minor. Another application was  
 made on his behalf on attaining majority after 7 years and  
 G 6 months of his father's death. In such a case, the  
 appointment cannot be said to sub-serve the basic object  
 and purpose of the scheme. It would rather appear that  
 on attaining majority he staked his claim on the basis that  
 his father was an employee of the Municipality and he had  
 died while in service. In the facts of the case, the  
 H municipal authorities were clearly right in holding that

with whatever difficulty; the family of the deceased employee had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments. [para 9] [251-F-H; 252-A] A

1.5. The impugned order of the Division Bench of the High Court is unsustainable in law and is set aside. [para 10] [252-B] B

**Case Law Reference:**

2000 (3) SCR 1053 relied on Para 5 and 6 C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2206 of 2006.

From the Judgment & Order dated 30.4.2004 of the High Court of Madras in Writ Appeal No. 3308 of 2002. D

R. Venkataramani, V.G. Pragasam, S.J. Aristotle, Prabhu Ramasubramanian, for the Appellants.

The Judgment of the Court was delivered by E

**AFTAB ALAM, J.** 1. This appeal by special leave is directed against the judgment passed by a Division Bench of the Madras High Court. By the judgment and order coming under appeal, the High Court directed the appellants to provide appointment to the respondent under the scheme of "compassionate appointments" for the death of his father while he was in service. The High Court further asked the appellants to comply with the direction within three months from the date of the order. F

2. The respondent's father Meenakshisundaram worked as a Watchman in Karaikal Municipality. He died on November 22, 1988, after putting in 4 years 3 months and 25 days of service. He left behind a widowed wife and two sons, including G

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- A the respondent who was 11 years old at that time. The wife of the deceased, whose age at the time of the death of her husband was 39 years, did not make any request for her appointment on compassionate grounds.
- B 3. After about five and a half years of his father's death, the respondent passed the S.S.L.C. examination in April, 1993. And then, for the first time on July, 29, 1993, the respondent's mother made an application for his appointment on compassionate grounds. No action was possible on this application since the respondent was still a minor. Later on,
- C another application was made for his appointment on compassionate grounds after 7 years and 6 months of the death of his father. Failing to get a favourable response to his application, he filed a Writ Petition before the High Court seeking appropriate directions to the concerned authorities.
- D That Writ Petition was disposed of by a single Judge of the High Court with a direction to the authorities to consider his claim for appointment on compassionate grounds afresh and pass an order on his application within four months from the date of receipt of that order. This order (first in the series)
- E passed by the High Court was followed by a contempt proceeding initiated against the authorities at the instance of the respondent but that is not relevant for the present and we need not go into that any further. Suffice to note that eventually, the Municipality rejected the respondent's claim for
- F compassionate appointment *vide* order dated 19.4.2000. He once again went to the High Court. A single Judge of the High Court, this time, rejected the Writ Petition. Against the order passed by the single Judge, he filed an intra-court appeal which was allowed by judgment and order dated April 30, 2004, and
- G the Municipality was given the direction to appoint the respondent within three months from the date of the order.

4. The appellants have now brought this matter to this Court.

5. In the order dated April 19, 2000, two reasons were assigned for rejecting the respondent's claim for appointment on compassionate basis. First, on the death of Meenakshisundaram, his wife, the mother of the respondent did not make any request for appointment and this showed that the demise of the concerned employee had not caused a very serious financial crisis in the family. In this connection it was also stated that in case on the death of Meenakshisundaram, his wife had made a request for appointment on compassionate grounds, her application might have been considered giving her relaxation of age and academic qualification. The second reason given for rejecting the respondent's claim was that following the death of Meenakshisundaram, the family was given Rs.26,674/- as terminal benefits besides family pension to the widow. Thus, the dependents of the deceased employee were not left completely without any financial resources.

6. The second reason given for not accepting the respondent's claim was rejected outright by the Division Bench relying upon a decision of this Court in *Balbir Kaur and another Versus Steel Authority of India Ltd. and others*, AIR 2000 SC 1596. And on this score, the decision of the High Court cannot be faulted. But the Division Bench also disapproved the first reason assigned for rejecting the respondent's claim. It accepted the respondent's explanation for her mother not applying for a job on the death of his father and held that could not be a ground for denying appointment to him on compassionate basis. In this connection, the Division bench said:

"So far as the first reasoning is concerned, at the time of death of father of the petitioner, the petitioner was just 11 years old. In the S.S.L.C., examination conducted in April, 1993, he came out successfully and made an application on 12-7-1993 for compassionate appointment. Thereafter, number of representations were sent to the

A Karaikal Municipality and this Court finds in one such representation dated 13-9-1996 (as found in the file produced by the Municipality), it has been stated as under,

B “My mother could not immediately seek for self-employment, as she was suffering from anaemia and hypo tension. Though my family was really in harness (sic distress), my mother managed to maintain the family with the help of her pension amount and that of her earnings from attending menial works from house to house.”

C This claim was made in fact three years prior to the filing of the first writ petition. In the affidavit filed in support of the present writ petition also in paragraph 2, a specific mention about this has been made. If that is so, obviously that was the reason as to why she did not apply for the job immediately after the death of her husband in the municipality, that is, due to bad health. In these circumstances, this Court does not find any substance in the first reasoning as well that the failure on the part of the mother of the appellant to apply immediately for appointment relaxing the relevant rules would show that the family was not in difficulties.”

F 7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anaemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganised way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide

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immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

9. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position,

A the case of the respondent did not come under the scheme of compassionate appointments.

B 10. In light of the discussions made above, we find the impugned order of the Division Bench of the Madras High Court unsustainable in law. It is set aside and the appeal is allowed but with no order as to costs.

R.P.

Appeal allowed.