



2025:KER:12583

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 17TH DAY OF FEBRUARY 2025 / 28TH MAGHA, 1946

WP(C) NO. 36829 OF 2023

PETITIONERS:

- 1 MANU KUMAR M.K
AGED 36 YEARS
S/O. LATE MOHANAKUMARAN,
KALATHIL HOUSE, THRIKKODITHANAM P.O.,
CHANGANACHERRY,
KOTTAYAM DISTRICT, PIN - 686105
- 2 SUJITH. S
AGED 38 YEARS
S/O. LATE SUDHAKARAN PILLAI,
V.S. BHAVANAM, 'THOTTINU VADAKKU',
CHAVARA, KOLLAM, PIN-681583

BY ADVS.
SRI.D.KISHORE
SMT.MEERA GOPINATH
SRI.R.MURALEEKRISHNAN (MALAKKARA)

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANNATHAPURAM, PIN - 695001



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2 THE DIRECTOR OF COLLEGIATE EDUCATION
CORPORATION BUILDINGS,
VIKAS BHAVAN,
THIRUVANANTHAPURAM,
PIN - 695033

3 THE SECRETARY/MANAGER
NSS COLLEGES CENTRAL COMMITTEE,
PERUNNAI, CHANGANACHERRY,
KOTTAYAM DISTRICT,
PIN - 686102

BY ADVS.

SRI.PREMCHAND R.NAIR, SR.GOVERNMENT PLEADER

SRI.P.GOPAL FOR R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 12.02.2025 AND THE COURT ON 17.02.2025
DELIVERED THE FOLLOWING:



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N. NAGARESH, J.

.....
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.....

Dated this the 17th day of February, 2025

J U D G M E N T

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The petitioners are aggrieved by the refusal of the 3rd respondent-Management in not providing employment under the Compassionate Employment Scheme despite specific directions issued by the Government.

2. The petitioners state that the father of the 1st petitioner, while working as Lower Division Clerk in the NSS Hindu College, Changanassery died while in service on 25.07.2008. The father of the 2nd petitioner, while working



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as Mechanic in the NSS College, passed away on 09.08.2010. Both the petitioners were qualified to be appointed in the Group C cadre under the Scheme for Compassionate Employment.

3. One Simi S. Nath, whose father was a Lecturer in an Aided College, filed W.P.(C) No.30738/2004 seeking employment under Compassionate Employment Scheme. The petitioner therein contended that when the Compassionate Employment Scheme is made applicable to all Government Organisations in which employees are paid out of Government funds, there is no logic in excluding Aided College Teachers and Staff from the purview of Compassionate Employment Scheme. A learned Single Judge allowed the writ petition as per Ext.P2 judgment holding that Ext.P3 Scheme therein would be applicable to the Teachers and Staff of Private Aided Colleges also.

4. The Nair Service Society challenged Ext.P2 judgment filing W.A. No.248/2012. The Division Bench of



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this Court held that educational agency like the petitioner therein should have gracefully accepted the Scheme and should have more compassionate to the dependents of their deceased employees. However, the Division Bench held that to the extent it holds that the Scheme would apply to the employees of the Private Aided Colleges, Ext.P2 judgment cannot be sustained. The Division Bench, however, held that once the guidelines for compassionate employment are framed, the claimants can stake their claim.

5. Subsequently, the 2nd petitioner filed W.P.(C) No.21632/2014 seeking to implement the directives of the Government to submit a draft proposal for implementing Compassionate Employment Scheme in Private Aided Colleges. This Court allowed the writ petition and directed the State Government to take a decision in the matter within six months. Thereafter, the Government issued Ext.P6 order dated 17.02.2020 framing Scheme for Compassionate Employment for dependents of employees of Private Aided



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Colleges.

6. The petitioners state that they have moved several applications before the 3rd respondent for providing to them compassionate employment. On 15.06.2016, the 1st respondent-Government sent Ext.P9 communication to the 3rd respondent stating that Government has no objection in giving employment to the 1st petitioner on compassionate grounds. Ext.P10 communication was issued to the 1st petitioner to that effect.

7. The petitioners thereafter filed W.P.(C) Nos.13889/2021 and 30704/2021 seeking appointment under the Compassionate Employment Scheme. The 3rd respondent took a stand that compassionate employment can be given only in the case of employees who died after 07.10.2013. This Court disposed of the writ petition directing the Government to hear the petitioners and the Management and to issue appropriate orders taking note of the observations contained in the judgment.



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8. The Government thereafter passed Ext.P12 order dated 01.10.2022 according sanction to the 3rd respondent to provide employment assistance to the petitioners, as done in some other cases. Ext.P12 order dated 01.10.2022 was followed by Ext.P13 communication dated 09.12.2022 to the 3rd respondent wherein the 3rd respondent was directed that 10% of the total number of LGS posts should be set apart for appointment under the Compassionate Employment Scheme.

9. The petitioners state that the reluctance of the 3rd respondent to give compassionate employment to the petitioners is highly illegal and arbitrary. Even though Ext.P6 Scheme restricts grant of employment assistance to the dependents of employees who died while in service on or after 07.10.2013, this Court as per Ext.P11 judgment has granted liberty to the Government to consider the issue as to whether the cut off date should be made applicable to the petitioners. The Government considered the issue and



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granted sanction to appoint the petitioners ignoring any cut off date. Still, the 3rd respondent is desisting from appointing the petitioners.

10. The 1st respondent filed counter affidavit in the writ petition. The 1st respondent submitted that the Government scrutinised the claim of the petitioners and gave Ext.R1(b) reply to the Manager in which the Manager was informed to take action as per Ext.P12 Government Order. The Manager has not given appointment to the petitioners even after Ext.R1(b). The 1st respondent stated that even though Compassionate Employment Scheme was implemented in private aided institutions only with effect from 07.10.2013, it does not imply that Management is not permitted to provide employment assistance to those eligible dependents of staff who died in harness before 07.10.2013.

11. The 3rd respondent vehemently opposed the writ petition. The 3rd respondent stated that the Scheme for compassionate appointment framed for private aided



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institutions can be applied only prospectively from 07.10.2013, the date of the Government Order. Ext.P12 sanction by the Government is contrary to Ext.R3(a) order. The Management has not provided compassionate employment to dependents of any deceased employees who died prior to 07.10.2013.

12. Relying on the judgment of the Hon'ble Apex Court in **V. Sivamurthy v. State of Andhra Pradesh and others** [(2008) 13 SCC 730], the counsel for the 3rd respondent urged that the benefit of compassionate appointment should be given strictly according to the Scheme. The issue is not what is advantageous to the employee, but what is the actual term of the Scheme.

13. The counsel for the 3rd respondent also relied on the judgment in **Bank of Baroda and others v. Baljit Singh** [AIR 2023 SC 3214] and contended that a direction by this Court to consider cases for compassionate appointment dehors the terms of the policy is impermissible as it would



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amount to rewriting the terms of the policy. Emphasising on the judgment of the Apex Court in ***Tinku v. State of Haryana*** [2024 KHC OnLine 6629], it was urged that in a case where there was no policy, instruction or rule providing for an appointment on compassionate ground, such appointment cannot be granted.

14. The counsel for the 3rd respondent further argued that Ext.P12 order of the government goes against the Scheme of Compassionate Appointment. If an illegality has been committed in favour of an individual or a wrong order has been passed, others cannot invoke the jurisdiction of the Court for perpetuating the illegality, urged the counsel for the 3rd respondent, relying on the judgment of the Apex Court in ***R. Muthukumar and others v. Chairman and Managing Director TANGEDCO and others*** [2022 SCC Online SC 151].

15. I have heard the learned counsel for the petitioner, the learned Senior Government Pleader



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representing respondents 1 and 2 and the learned counsel appearing for the 3rd respondent.

16. The father of the 1st petitioner and of the 2nd petitioner passed away on 25.07.2008 and 09.08.2010 respectively while working under the 3rd respondent's Private Aided College. The petitioners have been seeking employment under the Compassionate Employment Scheme since then. There was no Scheme for grant of compassionate appointment to the dependents of employees of Aided Colleges at that time. A Division Bench of this Court, as per Ext.P3 judgment, directed the Government to consider the case of the employees and their dependents of the Private Aided Colleges also for extending the benefit of Compassionate Appointment Scheme.

17. The 2nd petitioner approached this Court filing W.P.(C) No.21632/2014 seeking to implement the proceeding whereby the Government directed the Directorate of Collegiate Education to submit a draft



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proposal for implementing Compassionate Employment Scheme. Thereafter, the Government issued Ext.R3(a) order dated 07.10.2013 entrusting the Director of Collegiate Education to frame a Scheme for grant of compassionate employment to the dependents of employees of Private Aided Colleges.

18. Pursuant to Ext.R3(a) Government Order dated 07.10.2013, Ext.P6 order dated 17.02.2020 was issued providing Compassionate Employment Scheme for dependents of employees of Private Aided Colleges. However, in Ext.P6 Scheme, it was stated that the major dependents of employees of Private Aided Colleges who have expired on or after 07.10.2013, will be given a time limit of one year for submitting applications. In effect, Ext.P6 Scheme for Compassionate Employment was made prospective with effect from 07.10.2013, on which date Ext.R3(a) Government Order was issued.



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19. The 3rd respondent would contend that they are giving Compassionate Employment to dependents of their employees who passed away after 07.10.2013. But, this Court cannot compel the 3rd respondent to give Compassionate Employment to dependents of those employees who passed away while in service prior to 07.10.2013. It will be against the law laid down by the Hon'ble Apex Court in various judgments.

20. I find that the bread winners of the family of the petitioners passed away during 2008-2010. The Scheme for Compassionate Employment applicable to other Government Institutions was not extended to Private Aided Institutions then. W.P.(C) No.30738/2004 was filed before this Court and a learned Single Judge delivered Ext.P2 judgment directing to consider the claim of the petitioner therein under the Compassionate Employment Scheme issued by the Government.



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21. In W.A. No.248/2012, this Court delivered Ext.P3 judgment dated 01.10.2014 which directed the Government to finalise the guidelines relating to employment on compassionate grounds to the dependents of Aided College staff.

22. The 2nd petitioner thereafter filed W.P.(C) No.21632/2014 seeking to direct the Government to implement proposal for Compassionate Employment Scheme in Private Aided Colleges. This Court, as per Ext.P5 judgment, directed the State Government to take further consequential action. It was thereafter that Ext.P6 Scheme dated 17.02.2020 was floated.

23. As the petitioners were excluded from the purview of Ext.P6 Scheme, the petitioners approached this Court filing W.P.(C) Nos.13889/2021 and 30704/2021. In Ext.P11 judgment, this Court observed as follows:

5. Even though I have heard this matter in great detail, particularly in the context of the objections raised by the Management to the claim



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of the petitioners on the ground that their relatives had died prior to 07.10.2013, the fact remains that as long as the view of the Government is as recorded in the aforementioned Government Order, it will be difficult for the petitioners to seek appointment under the Compassionate Scheme.

6. However, it must be borne in mind that these are the persons who had been fighting all this while for getting the benefits under the Scheme. They were earlier denied appointments solely saying that the Scheme had not been put into operation, but when it was done - which ironically, was at the instance of the petitioner in W.P.(C)No.13889/2021, who had earlier obtained a judgment from this Court in W.P.(C)No.21632/2014 – they have been denied the benefits thereunder solely because the aforementioned cut-off has been implemented.

24. This Court, in Ext.P11, noted that there are precedents holding the field to the effect that even when Schemes are made prospective, the denial of benefits to persons based on a cut off date perhaps may not be fully tenable. This Court was of the firm view that the issue relating to the petitioners must engage the mind of the Government appropriately. This Court directed the Government to reconsider the matter, particularly with respect to the cut off date; clarifying that even if such a date



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is found necessary, then to decide whether the benefits thereunder can be prospective, without denying it to those people whose relatives died prior to it.

25. It was based on the judgment of this Court that the 1st respondent-Government has issued Ext.P12 order according sanction to the 3rd respondent to provide employment assistance under the Compassionate Employment Scheme to the petitioners, as done in some other cases. Ext.P12 would indicate that the cut off date was waived at least in certain deserving cases. The Government has taken a positive decision in favour of the petitioners taking into consideration the true spirit of Ext.P11 judgment and also other instances where similarly situated dependents were given benefits.

26. It is true that ordinarily this Court will not be justified in directing the 3rd respondent to grant Compassionate Employment to the dependent of an employee, departing from the provisions of the Scheme for



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grant of compassionate employment. However, in this case, this Court has already considered the case of the petitioners in Ext.P11 judgment and has given direction to the Government. It is the Government which framed Ext.P6 Scheme, which has accorded sanction to the 3rd respondent to provide employment assistance under the Compassionate Employment Scheme to the petitioners, taking into consideration the facts of the case.

27. The petitioners have been fighting for grant of compassionate employment, from the very beginning. The 2nd petitioner had approached this Court as early in the year 2014 filing W.P.(C) No.21632/2014. It was the legal fight of many dependents of employees which has brought about Ext.P6 Scheme for Compassionate Employment for dependents of employees of Private Aided Colleges. The Government or the 3rd respondent cannot defeat the claim for compassionate employment of those dependents who have been fighting for their claim, by fixing a cut off date



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while framing the Scheme. In the circumstances of the case, it would be a travesty of justice if compassionate employment is denied to the petitioners on the basis of a subsequent cut off date prescribed in the Scheme.

In the facts of the case, the writ petition is allowed. The 3rd respondent is directed to implement Ext.P12 order passed by the 1st respondent and to grant to the petitioners employment assistance under Ext.P6 Scheme. Appropriate orders shall be passed in this regard within a period of two months.

Sd/-

N. NAGARESH, JUDGE

aks/12.02.2025



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APPENDIX OF WP(C) 36829/2023

PETITIONERS' EXHIBITS

- Exhibit P1 TRUE COPY OF THE DEATH CERTIFICATE DATED 18.8.2008 ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS, DEPARTMENT OF PANCHAYATS
- Exhibit P1(a) TRUE COPY OF THE DEATH CERTIFICATE DATED 26.5.2011 ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS, DEPARTMENT OF PANCHAYATS
- Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 20.12.2011 IN W.P.(C) 30738/2004 OF THIS HONOURABLE COURT
- Exhibit P3 TRUE COPY OF THE JUDGMENT DATED 01.10.2014 IN W.A. 248/2012 OF THIS HONOURABLE COURT
- Exhibit P4 TRUE COPY OF THE ORDER DATED 25.10.2017 IN SLP (C) NO.34891/2014 OF THE HONOURABLE SUPREME COURT OF INDIA
- Exhibit P5 TRUE COPY OF THE JUDGMENT DATED 05.11.2019 IN W.P.(C) 21362/2014 OF THIS HONOURABLE COURT
- Exhibit P6 TRUE COPY OF THE G.O.(P) NO. 10/2020/H.EDN DATED 17.2.2020 ISSUED BY THE 1ST RESPONDENT
- Exhibit P7 TRUE COPY OF THE G.O.(RT) NO. 520/2020/H.EDN DATED 12.4.2020 ISSUED BY THE 1ST RESPONDENT



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Exhibit P8 TRUE COPY OF THE JUDGMENT DATED
04.3.2021 IN W.P.(C) 2520/2020 OF
THIS HONOURABLE COURT

Exhibit P9 TRUE COPY OF THE PROCEEDINGS
NO.D3/147/2015-HEDN DATED 15.6.2016
ISSUED BY THE 1ST RESPONDENT TO THE
3RD RESPONDENT

Exhibit P10 TRUE COPY OF THE COMMUNICATION NO.
E4/47419/2015/HEDN DATED 28.7.2017
ISSUED BY THE 2ND RESPONDENT TO THE
1ST PETITIONER

Exhibit P11 TRUE COPY OF THE COMMON JUDGMENT
DATED 27.07.2022 IN W.P.(C)
13889/2021 AND W.P.(C) 30704/2021 OF
THIS HONOURABLE COURT

Exhibit P12 TRUE COPY OF THE G.O.(RT) NO.
1453/2022/HEDN DATED 01.10.2022 OF
THE 1ST RESPONDENT

Exhibit P13 TRUE COPY OF THE PROCEEDINGS NO.
D3/57/2022/HEDN DATED 9.12.2022
ISSUED BY THE 1ST RESPONDENT TO THE
3RD RESPONDENT

Exhibit P14 TRUE COPY OF THE G.O.(MS) NO.
104/2022/H.EDN DATED 22.2.2022 ISSUED
BY THE 1ST RESPONDENT

Exhibit P15 TRUE COPY OF THE G.O.(RT) NO.
1374/2022/HEDN DATED 14.9.2022 ISSUED
BY THE 1ST RESPONDENT

RESPONDENTS' EXHIBITS

Exhibit R1(a) TRUE COPY OF LETTER NO.B/204/2023
DATED 16-01-2023



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Exhibit R1 (b)

TRUE COPY OF THE LETTER
NO.D3/57/2022/HEDN DATED 03-05-2023
BY THE PRINCIPAL SECRETARY TO
GOVERNMENT,HIGHER EDUCATION (D)
DEPARTMENT,THIRUVANANTHAPURAM TO THE
SECRETARY,NSS COLLEGE,CHANGANASSERY

Exhibit R3 (a)

A TRUE COPY OF G.O. (MS)
NO.636/2013/H.EDN DATED 07.10.2013