

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

MONDAY, THE 25TH DAY OF SEPTEMBER 2023 / 3RD ASWINA, 1945

OP (KAT) NO. 134 OF 2023

ORDER IN OA 2034/2020 DATED 14.11.2022 OF KERALA

ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS IN OA:

- 1 THE STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY, GENERAL ADMINISTRATION DEPARTMENT (SAINIK WELFARE), GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 695001
- 2 THE DIRECTOR, SAINIK WELFARE DIRECTORATE, VIKAS BHAVAN, THIRUVANANTHAPURAM, KERALA, PIN - 695001
- 3 THE DISTRICT SAINIK WELFARE OFFICER, CIVIL STATION, PATHANAMTHITTA, KERALA, PIN - 689645

BY SHRI.SAIGI JACOB PALATY - SENIOR GP

RESPONDENT/APPLICANT IN OA:

ABHIDEV.S, AGED 23 YEARS, S/O. LATE SAHADEVAN,



BY ADVS.
B.RENJITH KUMAR
CLARA SHERIN FRANCIS

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION ON 25.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

A. MUHAMED MUSTAQUE, J.

The Government of Kerala formulated a scheme to provide employment assistance in the State Service to the dependents of Defense Personnel and GREF/BSF Personnel, vide its order dated 29.04.2002. However, no such benefit was extended to the dependents of Personnel in the Central Reserve Police Force (CRPF). It appears that this was originally formulated in tune with a Central Government Scheme. Thereafter, the Central Government, by its decision dated 06.08.2004, extended the benefits to the dependents of Personnel in CRPF, Border Security Force, Central Industrial Security Force, Indo Tibetan Border Police Force, National Security Guard etc. However, the Government of Kerala did not amend its scheme as done by the Central

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Government.

2. Sri.Abhidev S., the respondent herein, is the son of one late Sahadevan, who was a CRPF Constable and was killed in an encounter with the militants in the State of Jammu and Kashmir. He died on 19.02.1999. Sri.Abhidev was a two-year-old minor at that time. When he became major, he approached the State Government for employment assistance under the Compassionate Employment Scheme. This was rejected as per order dated 16.09.2015, stating that Compassionate Employment Scheme under the State Government is not applicable to the personnel died while employed with CRPF. Sri. Abhidev, then approached the Kerala Administrative Tribunal; and the Tribunal, on 29.08.2017, noting that he has already moved the Government with a representation to include CRPF in the Scheme, directed the Government to take a decision. However, the Government rejected his request. Thereafter,

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Sri.Abhidev again moved the Tribunal by filing OA(EKM) No.332 of 2018 and the Tribunal rejected his challenge, noting that no such Scheme exists to extend to the dependents of personnel engaged with CRPF. Sri.Abhidev, then moved this Court in OP(KAT) No.138 of 2019; and this Court set aside the order of the Tribunal and directed the Government to consider the inclusion of CRPF in the light of the decision of the Central Government to include CRPF in the Scheme. The Government, then acting upon the direction of this Court, issued a Government Order dated 07.06.2019, including CRPF for extending the benefits under the Compassionate Employment Scheme. However, the request of Sri.Abhidev was rejected by the Government by an order dated 28.10.2020, stating that the Government Order is having only prospective effect and it cannot be claimed retrospectively. This was challenged by Sri.Abhidev before the Tribunal.

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The Tribunal allowed the claim, holding that the delay in issuing Government Order extending the benefit of Compassionate Employment Scheme cannot stand in the way of Sri.Abhidev in claiming compassionate employment before the Government. Aggrieved by this, the State has come up before this Court.

3. Heard learned Government Pleader and learned counsel for the respondent.

4. Learned Government Pleader submits that compassionate employment can be claimed only prospectively with reference to implementation of the Compassionate Employment Scheme and any claim prior to the implementation of the Scheme cannot be resurrected merely based on a Government Order recognizing such claim. It is further submitted that the Government had only intended to extend the benefit prospectively to those dependents in respect of personnel, who died after the Government Order came into force. It is argued that the present claim for

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compassionate employment is a stale claim inasmuch as that the father of Sri.Abhidev died in the year, 1999 and the object of compassionate employment is to give immediate solace to the family of the personnel, who died in harness.

5. It is to be noted that Sri.Abhidev immediately, on attaining majority, approached the Government and the Tribunal, espousing his case. The date of birth of Sri.Abhidev is "04.03.1996". He could not raise any claim before becoming a major. The proximity of claim and death sometimes is relevant inasmuch as that the very objective of compassionate employment is to provide assistance to the family taking note of the penurious circumstances, in which they have been placed consequent upon death of the personnel concerned. It is to be noted that here, nobody has a case that the financial circumstances of the family of Sri.Abhidev have been improved

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and his family is able to tide over the circumstances after the death of late Sahadevan. We note that there are no laches on the part of Sri.Abhidev in approaching the Government and the claim was within time.

6. The point then arises is whether the Government Order would run prospectively or not. It is to be noted that compassionate employment only acknowledges an existing right of a dependent to claim appointment. It cannot operate prospectively. If the Government Order acknowledges any right existing as on the date of issuance of that Government Order by relating the death prior to the Government Order, such claim cannot be rejected. There cannot be two classes of personnel for the purpose of compassionate employment with reference to the date of the Government Order. That would be offending the very ethos under Article 14 of the Constitution of India. It is further to be noted that the dependents of the

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Defense Personnel, who are otherwise categorized in the earlier Government Order, are entitled for the benefit. The CRPF personnel are having the equal status. But, for the issuance of the Government Order, the court would have constrained to hold that they are having the same status. Anyway, the Government having come out with the order rectifying earlier defects, that order will operate retrospectively to give the benefits of compassionate employment irrespective of date of death. The present order can only be treated as curing the defects existed in the earlier order by including the category of personnel, who are having same status of a Defense Personnel. It is not a new claim being endorsed by the Government, rather, it recognizes the equal treatment with other Defense Personnel. In that view of the matter also, we can easily conclude that this Government Order is only curing a defect of an

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existing order issued as early as in 2002. In view of the facts that Sri.Abhidev could not have raised the claim for compassionate appointment earlier as he was a minor at the time of death and he claimed it immediately after he became a major, the Government could not have denied his claim for compassionate employment. We find no scope for interference. Accordingly, the OP(KAT) is dismissed *in limine*.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-

APPENDIX OF OP(KAT) 134/2023

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE REQUEST G.O(P)
NO.458/2018/GAD DATED 23.01.2018
SUBMITTED BY THE RESPONDENT BEFORE THE
FIRST PETITIONER
- Annexure A2 TRUE COPY OF THE ATTRIBUTABILITY
CERTIFICATE IS ATTACHED TO THE ENQUIRY
OFFICE ORDER OF THE 5TH PETITIONER
NO.I.X.4/99-28/EC-II
- Annexure A3 TRUE COPY OF THE G.O(P) NO.110/02/GAD
DATED 29.04.2002
- Annexure A4 TRUE COPY OF THE NOTICE
NO.F.NO.24021/74/2004-P DATED
06.08.2004 ISSUED BY THE FOURTH
PETITIONER
- Annexure A5 TRUE COPY OF THE NOTIFICATION DATED
05.04.2000 NO.53-PRES/2000
- Annexure A6 TRUE COPY OF THE ORDER NO.G.O(MS)
NO.310/2015/GAD DATED 30.11.2015
ISSUED BY THE FIRST PETITIONER
- Annexure A6 (a) TRUE COPY OF THE ORDER NO.G.O(MS)
NO.78/15/GAD DATED 09.03.2015 ISSUED
BY THE FIRST PETITIONER
- Annexure A6 (b) TRUE COPY OF THE ORDER NO.G.O(P)
NO.145/2017/GAD DATED 07.07.2017
ISSUED BY THE FIRST PETITIONER
- Annexure A7 TRUE COPY OF THE ORDER DATED
29.08.2017 IN O.A (EKM) NO.1842/2017
OF THIS HONOURABLE TRIBUNAL
- AnnexureA8 TRUE COPY OF THE ORDER DATED
19.11.2018 IN O.A (EKM) NO.332/2018 OF
THIS HONOURABLE TRIBUNAL

- Annexure A9 TRUE COPY OF THE ORDER DATED
17.07.2020 IN OP(KAT) NO.138/2019 IN
THE FILES OF THE HONOURABLE HIGH COURT
- Annexure A10 TRUE COPY OF THE ORDER G.O(P)
NO.01/2018/SWD DATED 07.06.2019 ISSUED
BY THE FIRST PETITIONER
- Annexure A11 TRUE COPY OF THE ORDER NO.G.O(RT)
NO.35/2020/SAINIK WELFARE DEPARTMENT
DATED 28.10.2020 ISSUED BY THE FIRST
PETITIONER
- Exhibit P1 A TRUE COPY OF THE O.A NO.2034/2020
- Exhibit P2 TRUE COPY OF THE REPLY STATEMENT FILED
BY THE FIRST RESPONDENT IN OA NO .
2034/2020 ON 24.08.2021
- Exhibit P3 TRUE COPY OF THE IMPUGNED COMMON ORDER
PASSED BY THE KERALA ADMINISTRATIVE
TRIBUNAL IN O.A NO.2034/2020 DATED
14.11.2022