



WA No. 100315 of 2021

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 20TH DAY OF SEPTEMBER, 2022**

PRESENT

THE HON'BLE MR JUSTICE S G PANDIT

AND

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT APPEAL NO. 100315 OF 2021 (S-RES)

BETWEEN:

SRI GOURISH UDAY NAIK S/O LATE UDAY NAIK
AGE. 31 YEARS, OCC. NIL,
R/O.NO.723, GIDDA ROAD,
G.S.NAIK COMPOUND KAJUBAG
KARWAR, DIST. KARWAR-581301

...APPELLANT

(BY SRI. M S HARAVI, ADVOCATE)

AND:

THE MANAGING DIRECTOR
KARNATAKA RURAL INFRASTRUCTURE
DEVELOPMENT LTD., (FORMERLY KARNATAKA LAND ARMY
CORPORATION LTD.
GRAMEENABHIVRUDDHI BHAVANA
4TH AND 5TH FLOOR, ANAND RAO CIRCLE,
BENGALURU-560009

...RESPONDENT

(BY SMT. REBEENA SHIVAPUR FOR SRI. G.I. GACHCHINAMATH, ADV)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING THIS HON BLE COURT TO, SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN WP.NO.100097 /2021 DATED 28.07.2021 AND ALLOW THE WRIT PETITION AS PRAYED FOR, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT APPEAL COMING ON FOR *PRELIMINARY HEARING*, THIS DAY, **S.G.PANDIT J.**, DELIVERED THE FOLLOWING:





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JUDGMENT

The appellant is before this Court in this intra-court appeal under Section 4 of the Karnataka High Court Act, 1961 questioning the correctness and legality of the order dated 28.07.2021 in WP No.100097/2021, by which the petitioner's request for consideration of his case for compassionate appointment under Karnataka Civil Services (Appointment on Compassionate Grounds) (Karnataka amendment) Rules, 2000 is rejected.

2. Heard the learned counsel Sri. M.S. Haravi appearing for the appellant and Smt. Rebeena Shivapur, learned counsel for the respondent/authority and perused the writ appeal papers.

3. The appellant claims that he is the son of one Sri. Uday Naik, who was working as Assistant Task Force Commander in the respondent/Corporation and died while in service on 23.10.1999 leaving behind the petitioner and daughter. The petitioner was aged about 4 years as on the date of death of his father. The petitioner on attaining the age of majority said to have filed an application on



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10.10.2011 before the respondent/authority seeking compassionate appointment. The same was rejected on the ground that as on the date of consideration of petitioner's case for compassionate appointment, KCS (Appointment on Compassionate Grounds) (Karnataka) Rules, 1996 (for short, 'Rules 1996') was in force and under the said Rule, the petitioner would not be entitled for compassionate appointment. Challenging the same, the appellant was before the writ Court. The writ Court by the impugned order dated 28.07.2021 rejected the writ petition holding that the petitioner would not be entitled for compassionate appointment placing reliance on decision of the Hon'ble Apex Court in ***N.C. Santosh Vs. State of Karnataka***¹, wherein the Hon'ble Apex Court has held that the application for compassionate appointment shall be considered based on Rule, which was prevailing as on the date of consideration of the application.

4. Sri. M.S. Haravi, learned counsel appearing for the appellant/petitioner places reliance on decision of the

¹ Civil Appeal No.9280-81/2014, dated 4.3.2020



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Hon'ble Apex Court in ***Secretary to Govt. Department of Education (Primary) & Others Vs. Bheemesh Alias Bheemappa²***, wherein the Hon'ble Apex Court has held that the application for compassionate appointment shall be considered based on Rule which was in existence as on the date of death of government servant. Learned counsel would submit that since father of the petitioner died on 23.10.1999, case of the petitioner for compassionate appointment shall be considered based on Rule which was prevailing in the year 1999. Therefore, learned counsel would submit that the learned Single Judge committed an error in dismissing the writ petition holding that the application for compassionate appointment shall be considered based on Rule which was prevailing as on the date of consideration of application.

5. Learned counsel for the respondent/Corporation supports the impugned order of the learned Single Judge and submits that at this length of time, the petitioner would not

² 2021 SCC Online SC 1264



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be entitled for compassionate appointment in the respondent/Corporation.

6. It is not in dispute that father of the appellant died on 23.10.1999 and as on the date of death of his father, the petitioner was aged about 4 years. On attaining the age of majority, the petitioner submitted an application seeking compassionate appointment to the respondent/Corporation. The respondent/Corporation rejected his claim on the ground that under 1996 Rules, the petitioner would not be entitled for compassionate appointment since the petitioner has not made an application within the time prescribed under Rule 5 of 1996 Rules. Rule 5 of 1996 Rules reads as under:

5. Application for appointment.- Every dependent of a deceased Government servant, seeking appointment under these rules shall make an application within one year from the date of death of the government servant, in such form, as may be notified by the Government, from time to time, to the Head of the Department under whom the deceased Government servant was working:

Provided that in the case of a minor he must have attained the age of eighteen years within one year from the date of death of the Government servant and he must make an application within one year thereafter.



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Provided further that nothing in the first provision shall apply to an application made by the dependent of a deceased Government servant, after attaining the age of majority and which was pending for consideration on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1998.

7. In view of 1st proviso to above Rule, minor must have attained the age of eighteen years within one year from the date of death of government servant and he must make an application within one year thereafter. In the instant case, the petitioner has not attained the age of majority within one year from the date of death of his father and he has not made an application within one year thereafter. The petitioner's father died on 23.10.1999, whereas the petitioner attained the age of majority in the year 2013. Therefore, the respondent/authority is justified in rejecting the request of the petitioner for compassionate appointment under impugned endorsement dated 4.2.2014 (Annexure-J) to the writ petition.

8. The only contention of learned counsel for the petitioner is that placing reliance on decision of the Hon'ble Apex Court in **Bheemesh** (supra), the application of the



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petitioner ought to have been considered in the light of Rule existed as on the date of death of government servant. There is no dispute with regard to principle laid down in the said decision. The proviso to Rule 5 was amended to say that one should attain the majority within one year from the date of death of government servant and shall make application within one year thereafter. On 31.03.1999 itself, the petitioner would not be entitled for compassionate appointment, even on the rule that was in existence as on the date of death of petitioner's father on 23.10.1999. Moreover, the death of government servant is in the year 1999 and the "Compassion" would not remain for this long years. Compassionate appointment is provided to mitigate and overcome the difficulties of the family members of deceased government servant due to sudden death of the government servant. After more than 20 years, said 'Compassion' would no more remain. Therefore, we are of the considered view that no grounds are made out to interfere with the order passed by the learned Single Judge. Accordingly, writ appeal stands **rejected**. Pending



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applications, if any do not survive for consideration and accordingly, they are disposed off.

**SD
JUDGE**

**SD
JUDGE**

JTR