

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-03-2015

Coram :

THE HONOURABLE MR. JUSTICE V. DHANAPALAN
and
THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

Writ Appeal No. 1204 of 2011

1. State represented by the
Commissioner and Secretary to Government
Education Department, Secretariat
Chennai - 600 009
 2. The Director of School Education
Government of Tamil Nadu
Chennai - 600 006
 3. The District Educational Officer
Sankari Educational District
Sankari & Post, Salem District .. Appellants/Respondents
- Versus
- P. Sasikumar .. Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent against the order dated 21.04.2009 passed by this Court in WP No. 42359 of 2006.

Writ of Certiorarified Mandamus to call for the records available with the District Education officer, Sangagiri, Omalur Taluk, Salem District in his proceedings Na.Ka.No.12174/A1/95 dated 11.1.99 and quash the same and direct the respondents to reinstate the petitioner in service with immediate effect and to pay salary and allowances from the date of ousted from service w.e.f 12.1.1999 to the petitioner.

For Appellants : Mr. R. Ravichandran
Additional Government Pleader
For Respondent : Mr. V.P. Rajendran

JUDGMENT

(Judgment of the Court was delivered by V. DHANAPALAN, J)

This appeal is directed against the order passed by the learned single Judge in W.P. No. 42359 of 2006 dated 21.04.2009. By the said order, the learned Judge took a view that there was violation of principles of natural justice in the order passed by the third respondent in the writ petition cancelling the order of appointment given to the writ petitioner/respondent after three

years of his appointment. Therefore, the learned Judge, while allowing the writ petition filed by the respondent herein directed the appellants herein to reinstate him with continuity of service and other benefits but without backwages for the period in question.

2. The case of the respondent before the writ court was that his father N. Ponnusamy died on 12.01.1977 during the course of his employment as Secondary Grade Teacher. It is also his case that no one in his family, other than the respondent, claimed appointment on compassionate grounds. On verification of such claim made by the respondent, he was given appointment on compassionate ground as Junior Assistant by proceedings dated 29.11.1995 of the third respondent/third appellant herein. The respondent also joined as Junior Assistant in Government Higher Secondary School, Nadupatti, Omalur Taluk, Salem District on 11.12.1995. After his appointment, the appellants called for certain particulars from the respondent and also No objection letter from other legal heirs and the respondent's mother also submitted the same. However, without issuing any notice to the respondent, the third respondent/third appellant cancelled the order of appointment given to the petitioner on 11.01.1999. Consequently, a relieving order was issued to the petitioner by the Headmaster of Government Higher Secondary School Nadupatty on 12.01.1999. The said orders were called in question by the respondent before the Writ Court.

3. The appellants contested the matter by filing counter stating that the writ petitioner/respondent herein is the 9th legal heir of the deceased Government servant and he was 2 years old at the time of the death of his father. All other legal heirs except the wife of the deceased are educationally qualified to get compassionate appointment and only the senior most legal heir of the government servant can get appointment on compassionate ground if the family is in indigent circumstances. The writ petitioner/respondent is the 9th legal heir and when elderly dependants are available, he is not entitled to get appointment on compassionate grounds. It was contended that when the order of appointment is cancelled within three year, no notice be issued to the writ petitioner/respondent before cancellation of the same.

4. We have heard Mr. R. Ravichandran, learned Additional Government Pleader appearing for the appellants and Mr. V.P. Rajendran, learned counsel for the respondent and perused the records. The learned Additional Government Pleader appearing for the appellants would vehemently contended that appointment on compassionate grounds can be given to a deserving eligible person. The writ petitioner/respondent being the 9th legal heir ought not to have been issued appointment on compassionate grounds. It is further pointed out that there was no application submitted seeking appointment on compassionate grounds within the time frame fixed by the Government. Therefore, the learned Additional Government Pleader prayed for allowing the writ appeal.

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5. Contra, the learned counsel for the writ petitioner/respondent would contend that the object of providing appointment on

compassionate ground is to mitigate the sufferings of the family of the deceased Government servant. Such appointments need to be considered without regard to the fact as to the number of legal heirs left by the deceased government. Having regard to the above, the competent authority has appointed the writ petitioner/respondent on compassionate grounds. However, on an erroneous misconception, after three years from such appointment, it was cancelled without following the due process of law and no opportunity was given. Therefore, the order of cancellation passed by the third appellant/third respondent is in complete violation of natural justice.

6. The object and purpose of compassionate appointment is to mitigate the sufferings of the family of the deceased government servant and it has to be done in the manner as contemplated in various decisions of this Court as well as the Honourable Supreme Court. One such decision rendered by the Division Bench of this Court in the case of (State of Tamil Nadu vs. R. Nagamani) reported in (2008) 5 MLJ 1. The ratio laid down by the Division Bench in the above decision was also extracted by the learned single Judge in the order dated 21.04.2009 in the following manner:-

7. The very same issue was considered by the Division Bench of this Court in the judgment reported in (2008) 5 MLJ 1 (State of Tamil Nadu vs. R. Nagamani) and in paragraph 3, it is held as follows:-

"We find that in the instant case, a choice is given to make an application both to the senior most eligible person or a qualified person. The word "or" has to be treated as disjunctive in the facts and circumstances of this case. We are adopting this interpretation in keeping in view the fact that the scheme of compassionate appointment is one made for social benefit to the poor and indigent families. So, while considering the same, whenever it is possible, a construction should be adopted which preserves the benefit and any construction which frustrates the benefit must be eschewed. In the facts of this case, we are of the view that the word "or" must be construed disjunctively and we are of the opinion that the choice to apply for compassionate appointment is given either to the seniormost eligible person or any qualified person in the family of the deceased. It cannot be disputed that the first respondent is a qualified person in the family since the appointment which is sought to the post of an Assistant Teacher."

7. It is seen that the learned Judge has given due consideration to all the material documents to conclude that being the 9th legal heir of the deceased government servant will not disentitle the writ petitioner/respondent herein from getting appointment on compassionate grounds. The respondent, having been found eligible and appointed to the post of Junior Assistant, was

later relieved from the post after three years by stating that his appointment is not proper. Such an order of cancellation was passed after three years from the date of his appointment in total disregard to the principles of natural justice. Therefore, the learned single Judge set aside the order of cancellation and allowed the writ petition. Looking at any angle, the order impugned in this writ appeal does not call for any interference. The learned Judge has taken into consideration all other factors while allowing the writ petition. The view taken by the learned Judge that cancellation of appointment after three years without any notice to the respondent is in violation of principles of natural justice is proper and valid. In the light of the above, we find no hesitation in confirming the order passed by the learned single Judge. Accordingly, we dismiss the writ appeal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Education Department, Secretariat
Chennai - 600 009

2. The Director of School Education
Government of Tamil Nadu
Chennai - 600 006

3. The District Educational Officer
Sankari Educational District
Sankari & Post, Salem District.

1 cc to Government Pleader, Sr.No.11664

1 cc to Mr.V.P.Rajendran, Advocate, SR.No.11959

rv(co)

pmk.27.3.2015

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