

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.483 of 2015

L. Leef Brighty

Appellant

vs.

1 The Director of School Education
College Road
Nungambakkam
Chennai 600 034

2 The District Educational Officer
Thiruppur
Erode District

Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 10.04.2012 passed in W.P. No.9338 of 2012.

This writ petition filed under Section 226 of the constitution of India for the issuance of writ of certiorarified mandamus calling for the records on the file of the 2nd respondent in Na.Ka.1353/ A1-2010 dated 17.8.2010 and quash the same and directing the first respondent to appoint the petitioner on compassionate ground.

For appellant Mrs. Thenmozhi Shivaperumal

For respondents Mr. K. Karthikeyan
Government Advocate

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal arises from the order dated 10.04.2012 passed in W.P. No.9338 of 2012 by which the said writ petition was dismissed.

2 For the sake of brevity, clarity and convenience, the parties are referred to as per their rank in the instant appeal.

3 The appellant came up with the writ petition, questioning the legality and validity of the order dated 17.08.2010, passed by the second respondent in Na.Ka.No.1353/A1-2010, in and by which, her claim for appointment on compassionate appointment was turned down. In the said writ petition, the appellant sought a further relief of direction to the first respondent to appoint her on compassionate ground.

4 Indisputably, the appellant's mother, viz., Gunasekari, who was working as teacher for tailoring class at Nathakadiayur Government Higher Secondary School, Erode, died in harness on 24.05.1986. At the time of her demise, the appellant was about 4 years old along with her sister, aged about 5 years. Soon after the demise of the appellant's mother, the appellant's father made an application on 09.06.1986, seeking appointment on compassionate ground, which could not be granted, as he did not possess the requisite qualification. Thereafter, after a span of 18 years, the appellant, on attaining majority, made an application on 22.07.2004 for grant of appointment on compassionate ground. The second respondent, after examining the case of the appellant, by proceedings dated 17.08.2010, rejected the appellant's claim on the ground that on enquiry, it was found that the appellant is not in an indigent condition and also on the ground that her application was not submitted within a period of three years from the date of death of the Government servant, viz., her mother. As against the said rejection order, the appellant filed the instant writ petition. The learned Single Judge, after an analysis of the facts of the case and also the law in respect of appointment on compassionate ground, dismissed the writ petition.

5 The learned counsel for the appellant would submit before us that at the time of demise of her mother, the appellant was hardly 4 years old and she attained majority only in 2004. In the meantime, she acquired the requisite qualification in the year 2000. Thereafter, there was a ban on appointment on compassionate ground from the year 2000 to 2004 and as such, the application was made only in 2004. Countering the finding given by the Tahsildar on the financial condition of the appellant, it was contended that the finding given by the Tahsildar is based on no material. Thus, the rejection of the appellant's application on the aforesaid two grounds, is not sustainable in the eye of law.

6 The learned Government Advocate appearing for the respondents contended in support of the order passed by the learned Single Judge.

7 We have given our anxious consideration to the entire facts of the case.

8 The law in respect of grant of appointment on compassionate ground is well settled. The appointment on compassionate ground is to tide over the penurious condition of the dependent family members of the deceased employee dying in harness, in accordance with the policy. The policy of the State Government clearly provides for making an application within three years. It is also required that on verification of the financial condition of the dependent family members of the deceased Government employee, the case for appointment on compassionate ground may be considered.

9 The appointment on compassionate ground is not an appointment in accordance with the constitutional scheme of employment. Consideration of the application in violation of the provisions of Article 14 and 16 of the Constitution of India cannot be held as a legal way of appointment. However, it is a well settled proposition of law that to provide succor and immediate relief to the dependent family, who had fallen in penury and suffering on account of untimely death of the Government employee in harness, the Government is held as competent to frame a proper policy to consider the applications of dependent family members of the deceased employee for appointment on compassionate basis. However, in the absence of the same, no appointment on compassionate basis may be held as proper and valid.

10 In Umesh Kumar Nagpal Vs. State of Haryana and others¹, the Supreme Court had observed as under :

"2 x x x x x x x The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family....."

It was further held as under :

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a

1 (1994) 4 SCC 138

reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

11 For the reasons stated hereinabove, we do not find any infirmity, illegality or irrationality in the order passed by the learned Single Judge, sought to be impugned in the instant appeal.

12 Resultantly, the writ appeal stands dismissed. Costs made easy.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

cad

To

1 The Director of School Education
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Chennai 600 034

2 The District Educational Officer
Thiruppur
Erode District

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