

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26973 of 2010

&

M.P.No.1 of 2015

B.Tamilarasan

...

Petitioner

vs.

1.The State of Tamil Nadu
Represented by its Secretary to Government
Education Department, Chennai - 9

2.The Director of School Education
College Road, Chennai - 6

3.The District Educational Officer
Cuddalore District

4.The Assistant Elementary Educational Officer
Keerappalayam, Cuddalore District ...

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records made in the impugned order of the third respondent in Na.Ka.10416/A1/02 dated 16.08.2007 and consequential proceedings in Na.Ka.No.9796/A1/07 dated .08.2010 and quash the same and further direct the respondents to provide suitable employment to the petitioner on compassionate ground.

For Petitioner : M/s.S.N.Ravichandran

For Respondents : Mr.R.Vijaya Kumar
Additional Govt. Pleader

O R D E R

By consent, the writ petition itself is taken up for final disposal.

2. The petitioner seeks for issuance of a writ of certiorari to quash the order passed by the third respondent dated 16.08.2007 and the consequential order passed in August 2010. The matter relates to appointment of the petitioner on compassionate ground on account of the demise of the petitioner's father D.Balasubramaniam, who was working as a Secondary Grade Teacher in the Education Department at Valasakaad Panchayat Union Elementary School, Kumarapalayam Union and died in harness.

3. The facts are not in dispute. The fourth respondent recommended the petitioner's application for grant of compassionate appointment. There has been a chequered history to the case, the petitioner and his mother were driven from pillar to post to secure an appointment as a Junior Assistant in the Department for the petitioner on compassionate grounds. By the impugned proceedings, the third respondent has rejected the petitioner's application on three grounds. Firstly on the ground that the eldest among the legal heir is the wife of the deceased employee and she has not claimed any compassionate appointment. Secondly on the ground that the eldest child of the deceased is his next legal heir and she has not claimed any appointment on compassionate grounds and the third ground being that the appointment on compassionate grounds has not been made immediately after the demise of the employee and the family cannot be treated to be in indigent circumstances. So far as the first two grounds, the issue is no longer res integra and has been decided by the Hon'ble First Bench of this Court in State of Tamil Nadu Vs. R.Nagamani and Another reported in (2008) 5 MLJ 1, wherein the Hon'ble First Bench held as follows:

"3. 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 distinctive 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 senior most 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 is to the post of an Assistant Teacher.

4. Considering all these facts, we do not find there is any reason for us to interfere with the order passed by the learned single Judge. We, therefore, reiterate the direction

given by the learned Judge and direct that the appellants must offer appointment to the first respondent to a suitable post as per the rules, regulations and administrative instructions of the department and since this appointment has already been delayed, we direct that such appointment be offered within a period of four weeks from date."

4. The said decision was relied on by this Court in S.Vijaya Manoharan Vs. The District Elementary Officer, Gopichettypalayam and another in W.P.No.5439 of 2008 dated 10.11.2008 and it is pointed out that the scheme of compassionate appointment does not state that only widow or eldest member can apply for compassionate appointment and any one of the family member is eligible to apply under the scheme and the same is bound to be considered by the Department. Thus, applying the law laid down, the first two grounds, based on which the application was rejected, has to be necessarily set aside. The third ground raised by the respondent is that the application was belated and therefore, the petitioner's family cannot be considered as in indigent circumstances.

5. The petitioner's case is that the first application was given on 03.07.1992 and subsequently they were following up the matter and due to lack of guidance and subsequent advice, they submitted another application on 21.08.1997. The issue will be as to whether the application could be held to be belated. It is relevant to mention that the Government for the first time in G.O.Ms.No.120, Labour & Employment Department, dated 26.06.1995, imposed a condition that the application for appointment on compassionate ground should be made within three years of the death of Government Servant concerned. After the issuance of the said Government Order, confusion arose as to what to do with the applications made by the dependents of the Government servants, who have died prior to G.O.Ms.No.120, Labour & Employment Department, dated 26.06.1995. Therefore, the Government clarified in Government Letter No.39924/q1/95-1 dated 11.10.1995 that the three years period specified in G.O.Ms.No.120, Labour & Employment Department, dated 26.06.1995 is applicable only to the dependents of the Government servants, who died while in service on or after 26.06.1995 and it would not apply to past cases. After such a clarification was issued on 11.10.1995, several representations were made and therefore, Government Order clarified the same and another Government Order was passed in G.O.Ms.No.1479, Home (Pol.XV) Department dated 09.11.1999. Though the said Government order was issued by the Home Department, it was made applicable to cases of legal heirs of all Government servants, whose death occurred prior to 26.06.1995. The operative portion of the Government Order reads as follows:

"5. The Government have examined the matter carefully and have decided to cancel the orders issued in Government Letter No.101961/Pol.XV/98-6, home, dated 7.5.99, insisting only three year rule irrespective of the dates of death of

the Government servants. They accordingly direct that the orders issued in Government Letter No. 101961/Pol.XV/98-6, home, dated 7.5.99 be cancelled and that the cases of legal heirs of Government servants whose death occurred prior to 26.6.95 be considered on their merits. However, in case of deaths occurring on or after 26.6.95 the three year rule should be strictly followed."

6. So far as the financial condition of the family is concerned, it is seen that Tahsildar, Kattumanarkoil has issued a certificate dated 18.07.2008 certifying that the annual income of the family is only Rs.43,452/-. Though this certificate has been issued subsequent to the impugned order, it is a relevant document to be taken note of. One other factor to be considered is the manner in which the appeal petition filed before the second respondent was dealt with. The appeal petition was entertained and necessary information was called for from the respondents 2 and 3. In response there to information appears to have been furnished and the certificate issued by the Tahsildar certifying the indigent circumstances of the petitioner's family was very much available. However, without considering the relevant Government orders and the indigent circumstances of the petitioner's family, as duly certified, the appeal petition was mechanically rejected by order dated ...08.2010 (signed on 15.09.2010) that too by the third respondent and not the appellate authority. This one more reasons to set aside the impugned order. Hence, the manner in which the petitioner has been treated cannot be countenanced to be in accordance with law.

7. For all the above reasons, the writ petition is allowed and the impugned order of the third respondent dated 16.08.2007 made in Na.Ka.10416/A1/02 and the consequential order in Na.Ka.No.9796/A1/07 are quashed. The respondents 2 to 4 are directed to offer appointment to the petitioner on compassionate grounds in any available vacancy within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

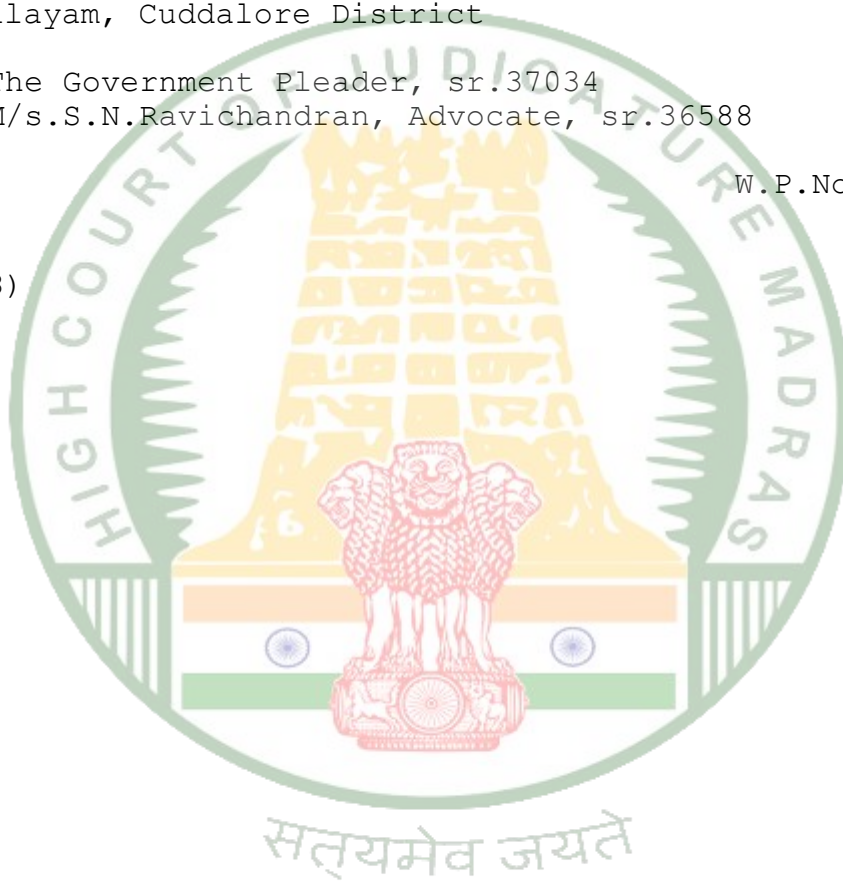
gpa

To

1. The Secretary to Government
Education Department, Chennai - 9
 2. The Director of School Education
College Road, Chennai - 6
 3. The District Educational Officer
Cuddalore District
 4. The Assistant Elementary Educational Officer
Keerappalayam, Cuddalore District
- +1 cc to The Government Pleader, sr.37034
+1 cc to M/s.S.N.Ravichandran, Advocate, sr.36588

ca(co)
kra(25/08)

W.P.No.26973 of 2010 &
M.P.No.1 of 2015



WEB COPY