

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.12121 of 2016

M.Sukumar

.. Petitioner

Vs

1.State of Tamil Nadu,
Rep. By its Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.

2.Director of School Education,
Chennai - 600 006.

3.District Educational Officer,
Namakkal, Namakkal District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the order passed by the third respondent in his proceedings Ni.Mu.No.1013/A1/2013, dated 24.06.2014 and quash the same, and direct the respondents to consider the petitioner for compassionate appointment to the post of Junior Assistant by giving necessary relaxation as per the order passed in W.A.No.1565 of 2015, dated 16.10.2015 and confer all the consequential benefits.

For petitioner : Mr.P.Ganesan

For Respondents : Mr.S.Gunasekarn, AGP

O R D E R

By was of filing this writ petition, the petitioner seeks to quash the impugned order dated 24.06.2014 passed by the third respondent, in and by which, the request of the petitioner seeking an appointment on compassionate appointment was rejected on the ground that he is over-aged.

2. Mr.S.Gunasekaran, learned Additional Government Pleader, takes notice for the respondents.

3. It is seen that the petitioner's father, while working as Record Clerk in Government High School, S.Pudupalayam, Namakkal District, died on 17.02.2009, leaving behind his wife, the petitioner and one daughter. Thereafter, the petitioner's mother made a representation dated 13.02.2012 seeking appointment to the petitioner on compassionate ground. The second respondent instructed the third respondent to pass appropriate orders by taking note of the G.O.Ms.No.9, Labour & Employment Department, dated 19.01.1998. However, the third respondent, by way of passing the present impugned order dated 24.06.2014, rejected the request of the petitioner for appointment on compassionate ground on the ground that he is over-aged as he has crossed 37 years as against the upper age limit of 35 years fixed in G.O.Ms.No.9, dated 19.01.1998.

4. In a similar circumstances, the Hon'ble Division Bench of this Court in the case of the Secretary to Government, Chennai and others v. G.Parthiban (W.A.No.1565 of 2015, dated 16.10.2015), while dealing with the upper age limit referring to the very same G.O.Ms.No.9, Labour & Employment Department, dated 19.01.1998, held that the age relaxation can be considered depending upon the facts and circumstances of the case. It is also relevant to refer to the paragraph Nos.8 and 9 of the said judgment, which are extracted below:

"8. In the case on hand, the writ petitioner's father was a Village Administrative Officer. Writ Petitioner is a member of a downtrodden community. When the Government have considered a similar case and issued orders in G.O.(I) No.785, dated 30.12.1996, by relaxing the age limit for one Mr. R.R. Chandrasekaran, though he had exceeded the age limit prescribed, by three years, on the ground that he belongs to Scheduled Caste community, the same yardstick should be applied to the case of the writ petitioner also, who is also similarly placed.

9. Compassionate appointment is to tide over the financial constraints of the family of a Government servant and the post to which an applicant can aspire, under the existing rules and government orders issued from time to time, is only upto the level of Junior Assistant. Considering the background of the writ petitioner, number of dependents in the family, he is also entitled to seek for the benefit of the orders passed in similar circumstances, and the appellants are expected to extend compassion to him. When

power is conferred on the authority in the rules to grant relaxation, having regard to the intention of the scheme to tide over the financial constraints, caused to the family, relaxation should be made, to achieve the laudable object of the scheme, instead of harping on technicalities, that nothing is mentioned in the G.O. relating to compassionate employment. Needless to state that G.O. does not prevail over the rules. It is also to be noted that the submission now advanced by the Learned Special Government Pleader is not even the reason assigned in the order rejecting the request of the respondent for employment assistance. It is a well settled principle of law, that order impugned is sustained or set aside, for the reasons contained in it, and it cannot be improved by new reasons. Father, who was just a VAO, had provided education to his son, but his untimely death has made his son to request the authorities to show compassion to him."

5. Since the petitioner, who belongs to SC category, has got the educational qualifications, the respondents are directed to appoint the petitioner in a suitable post befitting his educational qualification on compassionate ground by giving necessary age relaxation as per the above said judgment within a period of two months from the date of receipt of a copy of this order.

6. With the above direction, the writ petition stands allowed by setting aside the impugned order passed by the third respondent. No Costs. WMP.No.10484 of 2016 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

To Sub Assistant Registrar

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

2.Director of School Education,
Chennai - 600 006.

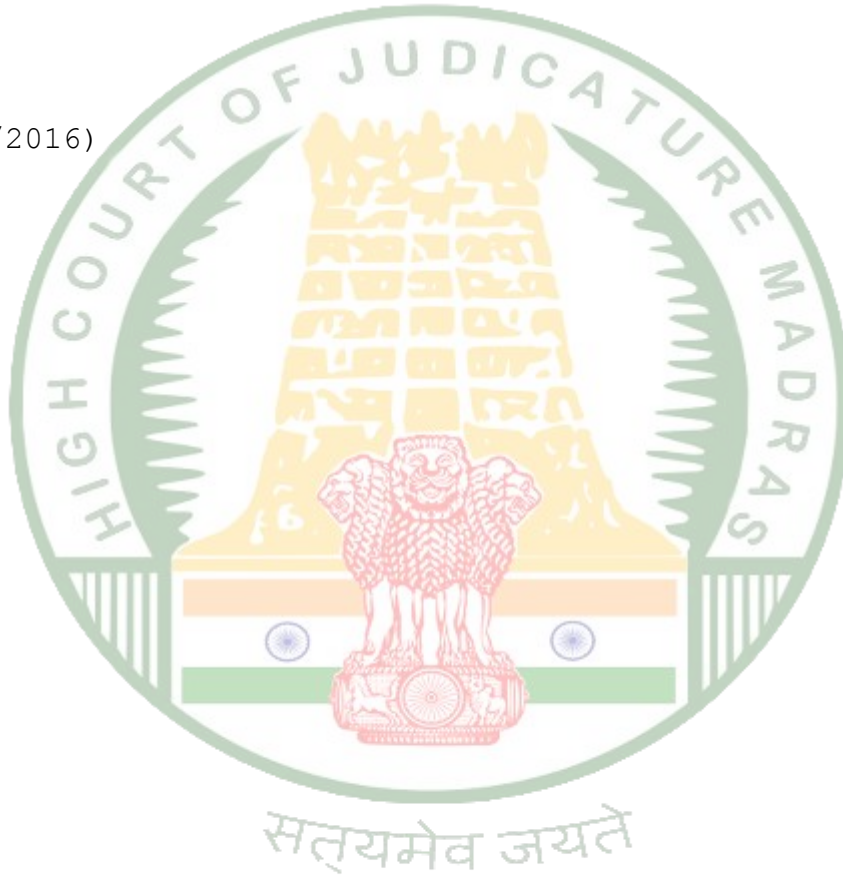
3.District Educational Officer,
Namakkal, Namakkal District.

+1cc to M/S.C.S.Associates, Advocate, S.R.No.27186

+1cc to the Government Pleader, S.R.No.27418

W.P.No.12121 of 2016

pa (CO)
srg (03/05/2016)



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