

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.19010 of 2015

and

WMP.No.29725 of 2016

N.Sathish Kumar ... Petitioner

Vs

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

2.The District Educational Officer,
Sankagiri - 637 301
Salem District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Na.Ka.No.8372/A1/2005 dated 07.05.2013 and 25.09.2013 and quash the same and further direct the respondents to appoint the petitioner as Junior Assistant on compassionate grounds.

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.R.Vijayakumar, AGP

ORDER

By consent of both the parties, the writ petition itself is taken up for final hearing.

2. The petitioner has filed this writ petition to quash the orders of the second respondent dated 07.05.2013 and 25.09.2013 and consequently, direct the respondents to appoint the petitioner as Junior Assistant on compassionate grounds.

3. The case of the petitioner is that his father, by name, Nallathambi was working as BT Assistant in Government Higher Secondary School, Edappadi, Salem District and he died on 17.04.2001, while in service, leaving behind him, his wife, son/petitioner herein and mother as legal heirs. At that time, the petitioner was minor and was studying VII standard. Hence, his mother submitted an application in March 2002 seeking employment on compassionate grounds to the petitioner, after completing his study. On receipt of the same, the second respondent collected all the required particulars and certificates from the petitioner and submitted the same to the first respondent to include his name in the list of eligible persons to get employment on compassionate grounds, through his letter dated 15.02.2006. In the mean time, the petitioner completed BCA in 2009 and MCA in 2012. However, the first respondent by his proceedings dated 21.12.2012, refused to include the name of the petitioner in the list for compassionate appointment on the ground that the petitioner has not completed 10th standard on the date of making such application and hence, his name was not considered for compassionate appointment, as per G.O.(D) No.560 Labour and Employment Department dated 03.08.1977. Following the same, the second respondent passed an order dated 07.05.2013 rejecting the claim of the petitioner. Thereafter, the petitioner approached the second respondent and made similar claim, which was again rejected on the same ground that he did not possess the requisite educational qualification at the relevant point of time, by an order of the second respondent dated 25.09.2013. Challenging the same, the petitioner has come up with the present writ petition.

4. Denying the averments raised in the writ petition, the respondents have filed a counter affidavit stating that at the time of death of the Government servant, the writ petitioner was minor and was studying 7th standard and that, there is no provision to appoint minors and unqualified persons under the compassionate scheme. It is further stated therein that mere forwarding the proposal to the first respondent cannot confer any right to the petitioner to get appointment on compassionate grounds.

5. Learned counsel for the petitioner submits that the petitioner's father died on 17.04.2001, while in service. At that time, the petitioner was minor and was studying 7th standard. Therefore, the application seeking compassionate appointment was made by his mother on behalf of the petitioner in March 2002, i.e., within three years from the date of death of the Government servant. He further submits that though the petitioner has acquired the requisite educational qualification i.e., 10th standard in 2004, without considering the same the

second respondent has rejected the claim of the petitioner stating that he did not possess the requisite educational qualification for the post of Junior Assistant at the time of making application, by the orders impugned herein, which are arbitrary, unjust and without any basis and the same are liable to be set aside.

6. Learned Additional Government Pleader appearing for the respondents reiterated the contentions raised in the counter affidavit filed by the respondents.

7. Heard both sides and perused the materials placed before this Court.

8. Before going into the merits of the case, it is useful to look into the object of the Scheme for compassionate appointment and eligibility criteria, which are extracted hereunder:

"OBJECT:

The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

ELIGIBILITY:

(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules."

9. It is not in dispute that the petitioner's father was employed as BT Assistant in Government Higher Secondary School, Edappadi, Salem District and he died on 17.04.2001, while in service. At that time, the petitioner was minor and was studying 7th standard. Hence, the petitioner's mother submitted the application in March 2002 seeking compassionate appointment to the petitioner, after completing his study. However, the second respondent by the impugned orders dated 07.05.2013 and 25.09.2013, rejected the claim of the petitioner without

considering the indigent circumstances of his family stating that he did not possess the requisite educational qualification during the relevant point of time. It is also not in dispute that the petitioner at the time of passing the impugned orders by the second respondent, has completed his graduation. It is further evident that the petitioner's family is in indigent circumstances.

10. At this juncture, it is noteworthy to refer to the observation of the Division Bench of this Court in the Judgment in Superintending Engineer, Madurai Electricity Distribution Circle v. V.Jaya reported in (2007) 6 MLJ 1011, which reads as follows:

"7. However, in a case of request for appointment on compassionate ground, however, the Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot ignore the very purpose of providing employment on compassionate ground to the dependant of an employee/government servant dying in harness in preference to anybody else as it is done so in order to mitigate the hardship to the family of the employee on account of his unexpected death while still in service. The concept of compassionate employment is intended to alleviate the distress of the family and it is for such purpose appointments are permissible and provided even in the rules and regulations and any rigid approach or too technical objections may defeat the very object of the scheme. It is for that purpose while considering the request for compassionate appointment, the authorities are expected to act as a Good Samaritan overlooking the cobwebs of technicalities.

8. What all the Court has to look into is whether the case of the writ petitioner comes under an exception for providing appointment on compassionate ground to mitigate the hardships due to the death of the bread-winner of the family would be smashed.

11. With this background, we find that the respondent had failed to adopt Good Samaritan approach ignoring the fact that she was constantly making a request for appointment to

the suitable post, even if it is the lowest in the cadre, as early as from 15.11.2000 i.e. within 13 months from the date of death of her husband, which has not been dealt with in proper perspective as observed above.

11. The conjoint reading of the relevant provisions of the Scheme for compassionate appointment and the observation of the Division Bench as extracted in the foregoing paragraphs, would make it clear that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. It is also made clear that when the family of the employee who died in service, is in dire needs of job and when no other member is employed, the Apex Court as well as this Court have always come to rescue of the applicants seeking appointment on compassionate grounds. In that event, such applications can be entertained in deserving cases.

12. In the light of the above, this Court is inclined to consider the present case.

13. The petitioner's father died on 17.04.2001 while in service. His mother made application for compassionate appointment to the petitioner in March 2002, i.e., within three years, which fact is not disputed by the respondents. It is also not disputed that the family of the deceased Government servant is in indigent circumstances. The only ground raised by the second respondent for rejection of the petitioner's claim is that he did not possess the requisite educational qualification at the time of making such application. However, as rightly pointed out by the learned counsel for the petitioner, at the time of passing the impugned orders, the petitioner has acquired more than the required educational qualification. Without taking note of the same, the impugned orders came to be passed by the second respondent citing G.O.(D) No.560, Labour and Employment Department dated 03.08.1977 and the same, in my considered view, defeat the very purpose and object of the Scheme for compassionate appointment. Thus, for the discussions held above, the orders so passed by the second respondent cannot be allowed to sustain and are liable to be set aside.

14. Accordingly, the writ petition is allowed and the impugned orders dated 07.05.2013 and 25.09.2013 passed by the second respondent are quashed. The petitioner is directed to approach the respondents with the necessary documents with regard to his educational qualification and indigent circumstances of his family, within a period of four weeks from

the date of receipt of a copy of this order. On production of such documents, the respondents shall consider the same and pass appropriate order, appointing the petitioner in any suitable post on compassionate grounds, within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The District Educational Officer,
Sankagiri - 637 301
Salem District.

+1cc to Mr. S. Kamadevan, Advocate, S.R.No.56974

ppa (CO)
md (8/11/2016)

W.P.No.19010 of 2015

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