

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.39853 of 2015

B.Jayanthi

... Petitioner

vs.

1. The Director of School Education,
College Road,
Chennai 600 006.
 2. The Joint Director of School Education,
(Personnel)
College Road,
Chennai 600 006.
 3. The District Educational Officer (Incharge)
Sankagiri,
Salem District.
 4. The Headmaster,
Dhadhapuram Higher Secondary School,
Idappadi Taluk - 637 105,
Salem District.
- Respondents

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 relating to the order in Na.Ka.No.2085/A1/2015, dated 21.09.2015 passed by the 3rd respondent pursuant to the order of the 1st respondent in Na.Ka.No.34157/J4/2015, dated 27.08.2015, not communicated to the petitioner, and quash the same and consequently direct the respondents to appoint the petitioner to the post of Junior Assistant on compassionate ground in Sankagiri Education District, Salem Revenue District.

For Petitioner : Mr.K.Raja
for Mr.N.Kolandaivelu

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the order dated 21.09.2015 passed by the 3rd respondent vide Na.Ka.No.2085/A1/2015 pursuant to the order of the 1st respondent in Na.Ka.No.34157/J4/2015, dated 27.08.2015 and for a consequential direction to the respondents to appoint her to the post of Junior Assistant on compassionate ground in Sankagiri Education District, Salem Revenue District.

2. According to the petitioner, her father viz. R.Balakrishnan, who was working as Junior Assistant in Dhadhapuram Higher Secondary School, Sankagiri Education District, Salem Revenue District, died on 13.11.2002, while in service, leaving behind his son B.Hariharan and his daughter B.Jayanthi, the petitioner herein, as his legal heirs. The petitioner's mother Late B.Umadevi pre-deceased her father and her brother viz. B.Hariharan also passed away on 21.06.2011.

3. After the death of her father, the petitioner made an application for compassionate appointment on 25.11.2003 and 20.07.2006, respectively. Pursuant thereto, the 3rd respondent directed the petitioner to submit the Death Certificate, Community Certificate and Service Book of her father. But, the proposal for compassionate appointment was returned by the 3rd respondent for compliance of certain requirements vide proceedings dated 28.07.2008 and the same was immediately complied with. Despite compliance, the 3rd respondent did not pass any order. Hence, the petitioner made a detailed representation enclosing all the required documents on 10.01.2013 to the 3rd respondent through the 4th respondent, for which, again the 3rd respondent directed the 4th respondent to rectify certain defects vide proceedings dated 10.02.2014. Again, the petitioner complied with all the requirements and sent the same to the 3rd respondent through the 4th respondent on 25.03.2014.

4. Since the claim for compassionate appointment was not finalized, the petitioner filed W.P.No.4120 of 2015 before this Court and by an order dated 12.03.2015, this Court held as follows:

"7. In case, the third respondent is of the view that certain documents are yet to be produced by the petitioner, it is open to the said respondent to address a letter to the petitioner and the fourth respondent to produce such documents. In any case, the third respondent should forward the proposal to the first respondent within a period of six weeks from the date of receipt of a copy of this order.

8. The writ petition is disposed of with the above direction. No costs. The connected Miscellaneous Petition is closed."

5. Aggrieved by the said impugned order, negating her claim for compassionate appointment on the sole ground that she is a married daughter, the petitioner has come up with this Writ Petition.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. When the matter is taken up for consideration, learned counsel for the petitioner submitted that the petitioner's request for compassionate appointment has been rejected mainly on the ground that she has already been married. It is his further submission that the petitioner is the sole surviving legal heir of her father, as her brother also passed away on 21.06.2011. Hence, he sought a direction to the respondents to consider the petitioner's claim for compassionate appointment. In support of his case, he relied on a judgment of this Court dated 25.11.2015 made in W.P.(MD) No.14239 of 2015, wherein, in a similar circumstance, this Court quashed the impugned order of the respondent and held that daughters, who got married after 29.11.2001 are entitled to seek compassionate appointment as per G.O.Ms.No.96.

8. Learned Special Government Pleader, by filing a detailed counter, submitted that after the death of the petitioner's father, the petitioner applied for compassionate appointment on 25.11.2003. Since the application did not contain enough particulars, she was advised to enclose the necessary documents in the prescribed format, but only after a long interval, she enclosed the documents and sent the same to the 3rd respondent. In the meanwhile, she got married and lived separately with her husband. Further, the other legal heir, i.e. the petitioner's brother applied for compassionate appointment on 05.02.2010. After the death of her brother, the petitioner made up her mind and applied for compassionate appointment on 25.03.2014. According to the learned counsel, the petitioner is not entitled to get appointment on compassionate grounds, as the Government restricted to provide the same vide Letter No.38454/Personnel 9(1)/2007, dated 27.02.2007 and Letter No.20992/Tho.Ka.3(1)/2013, dated 09.12.2013. Hence, he sought dismissal of the Writ Petition.

9. For better appreciation of the case, relevant portion of the order dated 25.11.2015 made in W.P.(MD) No.14239 of 2015 is extracted hereunder:

"6.

17. In fact, the third respondent passed the impugned order without any application of mind and also in violation of G.O.Ms.No.96, dated 18.06.2012. The daughters, who get

married after 29.11.2001, are entitled to seek compassionate appointment as per G.O.Ms.No.96, dated 18.06.2012. In the impugned order, the third respondent has mentioned the date of marriage of the petitioner as 01.05.2002. If that be so, the petitioner is entitled to compassionate appointment even as per G.O.Ms.No.96. In fact, the date of marriage is erroneously mentioned in the impugned order as 01.05.2002, whereas, the date of marriage is 19.02.1999. Since the marriage of the petitioner took place on 19.02.1999, which is prior to the cut-off date of 29.11.2001 as fixed in the G.O.Ms.No.96, the impugned order declined to provide compassionate appointment, based on G.O.Ms.No.96.

7. From the above judgment, it is clear that this Court held in categorical terms that the Government cannot deny compassionate appointment to the daughter of the deceased Government servant on the ground of marriage and quashed the Government Orders denying compassionate appointments to the married daughters. It is relevant to note that the deceased Government servant left behind her only one daughter, the petitioner herein and she has no male issues."

10. Therefore, following the ratio laid down in the above judgment, the impugned orders are quashed and a direction is issued to the respondents to provide compassionate appointment to the petitioner, without reference to her marriage. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed with the above direction. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

1. The Director of School Education,
College Road,
Chennai 600 006.
2. The Joint Director of School Education,
(Personnel)
College Road,
Chennai 600 006.
3. The District Educational Officer (Incharge)
Sankagiri,
Salem District.
4. The Headmaster,
Dhadhapuram Higher Secondary School,
Idappadi Taluk - 637 105,
Salem District.

+1 CC to M/S.N.Kolandaivelu, Advocate Sr.67786

+1 CC to The Government Pleader, High Court, Madras- 68367

CO-PPA

ths : 30.12.2016

W.P.No.39853 of 2015

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