

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

CORAM:

THE HON 'BLE MR. JUSTICE B.RAJENDRAN

Writ Petition No.14547 of 2012

A.Elanchezhian

... Petitioner

Versus

1. The State of Tamil Nadu,  
Rep. By Secretary to the Government,  
Education Department,  
Fort St. George, Chennai - 9
  2. The Director of School Education,  
College Road, Chennai 600 006
  3. The District Elementary Education Officer,  
Thiruvarur District, Thiruvarur
  4. The District Educational Officer,  
Thiruvarur District, Thiruvarur
- .. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the second respondent, issued in Mu.M.N.53107/J2/2001, dated 19.12.2011, quash the same and consequently, to direct the respondents to appoint the petitioner on compassionate ground in Government Service in a suitable post, in accordance with the petitioner's qualification.

For Petitioner : Mr. R.Saseetharan

For Respondents : Mr. A.Kumar, Spl.G.P.,

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O R D E R

This writ petition has been filed by the petitioner, challenging the impugned order of rejection, seeking for appointment on compassionate grounds.

2. According to the petitioner, his father T.Ayyasamy, died on 16.07.1996, while he was working as Primary School Head Master, Panchayat Union Elementary School, Needamangalam Panchayat Union, Thiruvarur District. After his demise, the petitioner applied for appointment on Compassionate grounds, through her mother, with necessary documents, on 16.06.1997. He had passed SSLC examination in April 1992 and then completed Higher Secondary School Examination in March 1994. He acquired Diploma in Office Automation and Net Working Management. He is the second son of the deceased Government Servant. The elders in the family have not chosen to apply

for appointment on compassionate grounds, but given No Objection Certificates for the petitioner's appointment. The petitioner's application was rejected by the third respondent, as early as on 19.03.1999, on the ground that elders in the family have not chosen to apply and it cannot be said that the family is in indigent circumstance. As against the said order, the petitioner preferred O.A.No.8547 of 2000 before the Tamil Nadu State Administrative Tribunal, which was transferred to the file of this Court in a Writ Petition in W.P.No.45994 of 2006. By an order, dated 08.08.2011, this Court had set-aside the order of the third respondent, following the decision reported in 2008 (5) MLJ 1 (State of Tamil Nadu and Others v. R.Nagamani and Others) and directed the Director of School Education to consider the case of the petitioner for appointment on compassionate grounds. Thereafter, the petitioner made a representation to the respondents along with the copy of the order in the Writ Petition. The second respondent, after conducting an enquiry, by the impugned order, dated 19.12.2011, has rejected the appointment of the petitioner on compassionate grounds, stating that the petitioner's elder brother, namely, A.Manimaran, has been living with the petitioner's family and in the marriage invitation produced by the petitioner, dated 01.09.2011, his elder brother's name is shown as "A.Manimaran, DME - Bharat Kalviyeyal College, Thiruvarur", and therefore, it is clear that his brother is working in the said Institution and he is the earning member and therefore, the petitioner is not entitled for appointment on compassionate grounds, as per G.O.Ms.No.998, dated 22.08.1981.

3. The said rejection order has been questioned in this writ petition, by contending, that the petitioner's elder brother is not an employee of the said Institution and he is engaged in the said Institution, for maintenance work, only by way of contract. Therefore, the learned counsel for the petitioner would contend that G.O.Ms.No.155, dated 16.07.1993, cannot be applied, as the petitioner's brother is not an employee on the date of death of the father.

4. The respondent 2 and 4 have filed a detailed counter affidavit, wherein they have categorically stated that the elder brother of the petitioner was unemployed at the time of death of his father and he got the employment only long after the death of his father cannot be accepted, because, the indigent condition / circumstance and status of the family of the deceased Government Servant are to be taken into consideration at the time of passing an order, while giving appointment on compassionate grounds and the second respondent has followed the guidelines provided in the Government Rules pertaining to compassionate appointment and accordingly, passed the impugned order, dated 19.12.2011. In the counter affidavit, it has been stated that, even as per G.O.Ms.No.560, dated 03.08.1977, G.O.Ms.No.155, dated 16.07.1993 and G.O.Ms.No.998, dated 22.08.1981, the appointment of the

petitioner on compassionate grounds could not be considered and therefore, prayed this Court for dismissal of this writ petition.

5. This Court has carefully considered the submissions made by the learned counsel for both sides and perused the materials available on record.

6. A perusal of the entire materials available on record would reveal that the petitioner's father died in the year 1996. After his demise, the petitioner applied for appointment on Compassionate grounds, through her mother, with necessary documents, within the prescribed period. This fact was taken into consideration in the rejection order passed in the year 1999. As against the said rejection order, the petitioner preferred O.A.No.8547 of 2000 before the Tamil Nadu State Administrative Tribunal, which was transferred to the file of this Court in W.P.No.4599 of 2006 and ultimately, the said writ petition was allowed. Thereafter, the petitioner made a representation to the respondents along with the copy of the order in the said Writ Petition. The second respondent, after conducting an enquiry, has passed the impugned order, dated 19.12.2011, and rejected the appointment on compassionate grounds. The said rejection order has been questioned in this writ petition.

7. While rejecting the appointment on compassionate grounds, in the impugned order, dated 19.12.2011, the second respondent has clearly stated that, as a routine process of verifying the particulars provided by the petitioner, it has come to light that the petitioner's elder brother, namely, A.Manimaran, is living with the petitioner's family and in the marriage invitation produced by the petitioner, dated 01.09.2011, his elder brother's name is shown as "A.Manimaran, DME - Bharat Kalviyeyal College, Thiruvarur", and therefore, it is clear that his brother is working in the said Institution and he is an earning member and therefore, the petitioner is not entitled for appointment on compassionate grounds, under G.O.Ms.No.998, dated 22.08.1981.

8. With the said background, let us analyze various decisions of the Hon'ble Supreme Court, in the matter of compassionate appointment, which reads as follows:-

(i) (2014) 2 MLJ 494 (SC) (State Bank of India and others v. Surya Narain Tripathi):

"8. In all the matter of compassionate appointment it must be noticed that it is basically a way out for the family, which is financially in difficulties on account of the death of the bread earner. It is not an avenue for the regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution

of India. That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment. This being the principle which has adopted all throughout, it is difficult for us to accept the submission made on behalf of the respondent."

(ii) 2012 AIR SCW 5131 : (2012) 9 SCC 545 (State of Gujarat and Others v. Aravind Kumar T.Tiwari and another):-

"5. We have considered the rival submissions made by the learned counsel for the parties and perused the record. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16 of the Constitution of India, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it - (Vide Union of India & Ors. v. Shashank Goswami & another, AIR 2012 SC 2294)."

(iii) (1998) 6 SCC 165 (State of M.P. & another v. Dharam Bir):-

"The courts and the Tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution of India."

(iv) (2011) 3 LLN 37 (SC) (Bhawani Prasad Sankar v. Union of India and Others):-

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:-

(i) Compassionate employment cannot be made in the absence of Rules or Regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment for compassionate ground is to meet the sudden crisis occurring in the family on account of death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased / incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) compassionate employment is permissible only to one of the Dependants of the deceased / incapacitated employee, viz., parents, spouse, son or daughter and not to all relatives, and such appointment should be only to the lowest category, i.e., Class III and IV posts."

(v) 2006 (5) SCC 755 (State of Jammu & Kashmir and others v. Sajad Ahmed Mir):-

"10. In LIC of India v. Asha Ramachandra Ambedkar, it was indicated that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments."

9. From a perusal of the legal principles enunciated in the decisions, referred to supra, it is crystal clear that the appointment on compassionate grounds cannot be claimed as a matter of right and source of recruitment. It is merely an exception to the requirement of law, keeping in view the fact of the death of the employee, while in service leaving his family without any means of livelihood.

10. As far as the submission of the learned counsel for the petitioner that his elder brother, Thiru.A.Manimaran, was unemployed at the time of death of his father and his brother got the employment only long after the death of his father is concerned, the same cannot be accepted, because, the indigent

condition / circumstance of the family of the deceased Government Servant at the time of passing an order was taken into consideration, by the second respondent. Further, it is pertinent to note that, at no point of time the petitioner has stated that his elder brother is living separately without lending support to the members of the deceased family.

11. Further, the second respondent has passed the impugned order, after thorough scrutiny of records and facts pertaining to the case and as per the guidelines provided in G.O.Ms.No.560, dated 03.08.1977, G.O.Ms.No.155, dated 16.07.1993 and G.O.Ms.No.998, dated 02.05.1981, which does not require any interfere by this Court. None of the grounds raised in the affidavit are tenable and hence, the petitioner is not entitled to the relief as prayed for by the petitioner, in this writ petition. Therefore, this writ petition is dismissed. No costs.

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Secretary to the Government, State of Tamil Nadu,  
Education Department, Fort St. George, Chennai - 9
2. The Director of School Education,  
College Road, Chennai 600 006
3. The District Elementary Education Officer,  
Thiruvarur District, Thiruvarur
4. The District Educational Officer, Thiruvarur District,  
Thiruvarur

+1 cc to Mr.R.Saseetharan, advocate, sr.46889.

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