

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.26343 of 2012

M.Satish Kumar

... Petitioner

Versus

- 1.The Director of School Education,
DPI Compound, College Road,
Chennai-6.
- 2.The Director of Elementary School Education,
DPI Compound, College Road,
Chennai-6.
- 3.The District Educational Officer,
Erode, Erode District.
- 4.The District Elementary School Educational Officer,
Erode, Erode District.
5. The Assistant Educational Officer,
Kodumudi, Erode District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 3rd respondent in his proceedings No.O.Mu.No.035/a1 dated 31.01.2012 and quash the same and consequently direct the respondents to appoint the petitioner on compassionate grounds in the respondents departments.

For Petitioner: Mr.K.Karthikeyan
for M/s.R.Gopalakrishnan

For Respondents: Mrs. ME.Rani Selvam
Additional Government Pleader

O R D E R

This Writ Petition is filed seeking for Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 3rd respondent in his proceedings No.O.Mu.No.035/a1 dated 31.01.2012 and quash the same and consequently direct the respondents to appoint the petitioner on compassionate grounds in the respondents Departments.

2. The facts of the case in hand is that the petitioner's father expired on 21.7.1994 at which time he was employed as teacher in Thamaraipalayam Panchayat Union Middle School. The petitioner was 13 years old and his younger brother was 9 years old at the time of their father's demise. Hence, the petitioner's mother gave an application to the respondents on 02.12.1999 stating that the petitioner had attained the age of 18 years as on 31.05.1999 and sought for appointment on compassionate grounds for the petitioner. The respondent by an order dated 31.01.2012 rejected the said application stating that the mother of the petitioner had not applied for appointment on compassionate grounds in time, but had chosen to wait for five years to make an application and therefore, the application is time barred. Further, the petitioner's explanation that she was unable to make the application within the stipulated time. Her further explanation that she could not present the application in time since she was medically unfit was also rejected on the ground that the doctor's certificate from a Private Medical Practitioner is not acceptable. Challenging the impugned order passed by the third respondent, the petitioner has filed this present Writ Petition.

3. Heard Mr.K.Karthikeyan, learned counsel representing M/s.R.Gopalakrishnan appearing for the petitioner and Mrs.ME.Rani Selvam, Additional Government Pleader appearing on behalf of the respondents.

4. In this context, a Division Bench of this Court in a judgment reported in The Chief Engineer/Personnel, T.N.E.B., & another Vs. S.Suder reported in MANU/TN/0635/2009 was held as follows:

"4. In the judgment reported in 2001 Writ L.R.601 in the case of "Ramadoss.D. Vs. The Chief Engineer, T.N.E.B.", this Court (D.Murugesan,J) directed the consideration of the application made within a period of three years after attaining the majority by placing reliance on the very same Circular in B.P.No.46, dated 13.10.1995.

5. Subsequently, in the judgment reported in 2002(4) L.L.N.1132, (D.Murugesan,J.), in the case of "P.Ravi V.Chief Engineer (P), T.N.E.B.", also, the very same Circular was relied upon and the application for appointment on compassionate grounds was directed to be considered.

6. Justice P.D.Dinakaran, has also taken the very same view by following the very same Circular dated 13.10.1995, in W.P.No.19673 of 2003, in the order dated 23.09.2003, in the case of "J.Jayakaran Vs. The Superintending Engineer, Theni Electricity Distribution Circle, Theni" and the application for appointment on compassionate grounds was directed to be considered.

7. Justice K.Govindarajan has also taken the same view in Writ Petition No.13099 of 2003, order dated 30.10.2003, in the case of "G.Muthamilselvan V. The Chief Engineer (Personnel) and Anr."

8. Justice F.M.Ibrahim Kalifulla has also taken the same view in the decision reported in Manu/TN/0337/2004, 2004(3) CTC 120, (2004) MLJ 238 in the case of "Meer Ismail Ali.T. V. The Tamil Nadu Electricity Board". We are told that the order in the said case of "Meer Ismail Ali" was confirmed in the Writ Appeal by the Division Bench in W.A.No.4008 of 2004, by judgment dated 1.12.2004 and as against the said judgment dated 1.12.2004, the Special Leave Petition in Civil Appeal No.6387 of 2005, was also dismissed by the Supreme Court, by judgment dated 4.4.2005."

5. In a very similar issue, a Division Bench of this Court in W.P.No.3050 of 2003 observed as follows:

"9. Similar question came up for consideration before a Division Bench of this Court in Writ Appeal No.3050 of 2003 in the case of "Indiraniammal V. The Chief Engineer (Personnel) and Anr." and by judgment dated 08.03.2005, the Division Bench set aside the impugned order therein in rejecting the request of the petitioner therein for appointment on compassionate grounds and directed the Board to consider the application.

10. There cannot be a controversy in view of the settled position of law that appointment on compassionate ground is not automatic, as it would amount to back door entry to a post, by-passing the Rules to be followed for such appointment.

Nevertheless, to tide over the financial constraints of a family due to sudden demise of the breadwinner of a family, the State Government or its undertaking or for that purpose, any employer, would be entitled to frame Scheme/Rules for such appointment by prescribing the conditions as well as the eligibility. Hence, the request for appointment on compassionate grounds would be considered with reference to the Scheme/Rules or any of the provisions framed for the said purpose, either by the Government or by the employers, as the case may be.

11. In the case on hand, the father of the respondent while he was working as Wireman in the office of the Assistant Engineer, TNEB, Kazhuvanthilai, Kanyakumari District, died due to illness on 07.03.1998. At the time of the death of his father, the respondent was 15 years old and for the purpose of making application for appointment on compassionate grounds, he should have completed 18 years. Hence, he could not make any application for appointment on compassionate grounds. By placing reliance on B.P.No.46, dated 13.10.1995, he made application on 3.9.2002, within a period of four days from the date of his attaining majority, i.e., 18 years. That application was rejected on the ground that the same cannot be entertained as per the Circular in vogue on the date of the application. Presumably, the order of rejection was passed on the basis of the Memo, dated 6.4.2002.

12. As we have already referred that the application for compassionate appointment is maintainable by a person within a period of three years after he/she attains the majority, irrespective of the fact that the breadwinner died while such person was a minor in terms of the proceedings of the Board in B.P.No.46 dated 13.10.1995. This position is not in dispute. We may also once again refer to the fact that following the very same Board proceedings in B.P.No.46, dated 13.10.1995, consistently, this Court had taken the view that the application seeking for appointment on compassionate grounds, has to be considered in the event when such applications are made within a period of three years after he/she attains the majority."

6. If the above proposition is applied to the present facts of the petitioner, then the petitioner would be entitled for an appointment on compassionate ground, since the application has

been made within a period of three years from the date of attaining majority. Since this application for compassionate appointment was rejected on the sole ground that the same was time barred and by applying the ratio in the decision of the Division Bench, the impugned order cannot be sustained and is liable to set aside. Accordingly, the impugned order dated 31.01.2012 passed by the third respondent is quashed.

7. The respondents are directed to forthwith issue an appropriate appointment order to the petitioner based on his qualifications and other relevant criterias within a period of eight weeks from the date of receipt of copy of this order.

8. With the above observation, this Writ Petition is allowed. No costs. M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director of School Education,
DPI Compound, College Road,
Chennai-6.
- 2.The Director of Elementary School Education,
DPI Compound, College Road,
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- 3.The District Educational Officer,
Erode, Erode District.
- 4.The District Elementary School Educational Officer,
Erode, Erode District.
5. The Assistant Educational Officer,
Kodumudi, Erode District.

+1cc to Mr.R.Gopalakrishnan, Advocate Sr.69299
+1cc to the Government Pleader Sr.69168

W.P.No.26343 of 2012

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srg 26/12/2016