



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2016

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CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.11797 of 2011

N.Jeyakanth

... Petitioner

Vs.

- 1.State of Tamil Nadu
Rep. by The Secretary to Government,
School Education Department,
Secretariat,
Chennai - 9.
- 2.The Director of Elementary Education,
Chennai.
- 3.The District Educational Officer (In-Charge),
Pattukototai,
Thanjavur District.
- 4.The District Elementary Educational Officer,
District Elementary Education Office,
Thanjavur.
- 5.The Assistant Elementary Educational Officer
Assistant Elementary Education Officer,
Mathukur,
Thanjavur District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent herein dated 02.09.2009 in his O.Mu.No.2344/A 1/2009 and quash the same and consequently, direct the respondents to appoint the petitioner in any suitable post on compassionate ground in their department with all monetary and service benefits.

For Petitioner
For Respondents

: Mr.A.Uthayakumar
: Mr.V.Pandi,
Govt. Advocate

**ORDER**

The petitioner has come out with the present writ petition against the order of rejection passed by the third respondent and requested for appointment on compassionate ground.

2.The father of the petitioner was working as Headmaster in Panchayat Union Elementary School at Maravakadu, Thanjavur District and while in service, died on 21.06.2000. The petitioner is having two elder brothers. But, they have gone out and living separately with their families. The petitioner alone is living with his mother. In such circumstances, the mother of the petitioner is suffering from ill health for the past ten years and therefore, she is not fit for employment. Based on the said facts, the petitioner sent an application dated 07.02.2002 to the third respondent through the fourth respondent requesting employment on compassionate ground. The third respondent by his proceeding Mu.Mu.No.4617/A 1/ 2008, dated 15.07.2008 rejected the request of the petitioner stating that he is not eligible on the ground that when the petitioner applied for compassionate appointment, his elder brothers were unmarried. It is further stated that the compassionate appointment can be given only to the wife of the deceased employee and if the mother died or waived her right, then the eldest legal heir can only apply for compassionate appointment. Without doing so, it observes that the younger legal heir/the petitioner had applied for compassionate appointment, which is not sustainable as per the Government Order. However, the petitioner again applied for compassionate appointment and the same was again rejected by the third respondent by his proceedings in O.Mu.No.7685/A1/2008, dated 30.10.2008. Hence, the petitioner preferred an appeal before the third respondent and the same was rejected by the proceedings O.Mu.No.2344/A 1/2009, dated 02.09.2009 stating that the appeal has been filed beyond the period of limitation. Against which, the present writ petition has been filed by the petitioner.

3.The third respondent filed a counter affidavit stating that the petitioner's father died while in service leaving behind his wife and three sons in indigent condition. The petitioner, who is the youngest legal heir sought for appointment on compassionate ground. But, as per G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993 and Govt. Lr.No.57630/Q1-93-2, dated 27.07.1994, the request of the second or third legal heir of the deceased Government servant for compassionate ground appointment could be considered only if the eldest heir is married and employed before the death of the Government servant and separated from the family without giving any monetary help. The petitioner, who is the third son and fourth legal heir of the deceased employee, has not produced any document to prove that the elder



heirs are no use to the family and hence, the request of the petitioner was rejected. Therefore, the impugned order passed by the third respondent is sustainable.

4. Heard both sides.

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5. It is well settled that the appointment on compassionate ground will be given to the family, which is in indigent circumstances due to the sudden demise of the employee of the Government servant. In this case, the petitioner being the third son of the deceased Government employee and when the other legal heirs have not sought for any compassionate appointment, the petitioner sought for appointment on compassionate ground. In normal circumstances, the authorities concerned, ask proof from the other legal heirs to show that the elder legal heirs are not available or living separately by not extending any monetary help to the family. But, in this case, the authorities did not ask any proof from the petitioner. In such circumstances, the respondents shall not state that the request of younger person, who is the youngest legal heir of the deceased employee cannot ask for appointment on compassionate ground and the same is not correct.

6. This Court, on several occasions, had decided that the compassionate appointment shall not be denied on the basis of delay or at any rate on bias or other reasons and it shall be denied only on the basis of consideration of the non-indigent circumstance of the family.

7. In the present case, the respondents without going into the factum of indigent circumstance of the family, simply rejected the request of the petitioner. There is no acceptable reason or investigation report to show that the family of the petitioner is not living in indigent circumstances. In such circumstances, this Court directs the third respondent to reconsider the matter afresh on the basis of indigent condition of the family and pass appropriate orders on merits and in accordance with law within a period of eight 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.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar



To

1. The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 9.

2. The Director of Elementary Education,
Chennai.

3. The District Educational Officer (In-Charge),
Pattukototai, Thanjavur District.

4. The District Elementary Educational Officer,
District Elementary Education Office,
Thanjavur.

5. The Assistant Elementary Educational Officer
Assistant Elementary Education Officer,
Mathukur, Thanjavur District.

+ 1 CC TO Mr.A.UTHAYAKUMAR, ADVOCATE IN SR No. 73317

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 73261

CLA/TK

TE/SV-MMS/SAR-II : 28/03/2017 : 4P/8C

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28.11.2016