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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.26887 of 2004

S.Syed Ismail

... Petitioner

Vs

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

2.The Chief Education Officer,
Chennai.

3.The Correspondent,
Jamalia Higher Secondary School,
Perambur, Chennai - 12.

...Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of mandamus directing the respondents to provide employment to the petitioner on compassionate grounds in a suitable post in the future vacancy in the 3rd respondent school and with all consequential benefit.

For Petitioner : Mr.S.N.Ravichandran

For Respondents: Mr.R.Govindasamy
Spl. G.P. for R1 & R2
Mr.A.Abdul Rahim
for R3

ORDER

This writ petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to provide employment to the petitioner on compassionate grounds in a suitable post in the future vacancy in the third respondent school with all consequential benefits.

2. The case of the petitioner is that his father Syed Rahamadulla was working as Drawing Master in the third respondent school and he died in harness on 5.3.1989, leaving



behind the petitioner, his mother, two sons and a daughter. The mother of the petitioner submitted an application in the year 1995 to the third respondent for appointment on compassionate grounds and at the time of submitting application, the petitioner was possessing SSLC qualification. Despite repeated representations of his mother, the third respondent school has not considered the case of the petitioner. Thereafter, the Directorate of Employment directed the third respondent school to consider the claim of the petitioner.

3. On 26.7.2001, the third respondent passed an order stating that there was no vacancy in the school to appoint the petitioner on compassionate grounds. Thereafter, the petitioner's mother submitted representations on 7.1.2002 and 5.3.2002 to the first respondent to provide employment on compassionate grounds. By an order dated 11.11.2002, the first respondent directed the petitioner to approach the third respondent school, as it is a private aided school and the appropriate authority was the third respondent school and moreover, since the third respondent school receiving 100% grant from the State was bound to follow instructions in the case of the petitioner and the statutory authorities have failed to perform their duty vested in them in law.

4. According to the petitioner, he was eligible to be appointed as a Watchman of the school. In 1997, the then Watchman, one Ganapathy passed away and at that time he was not given appointment. But the third respondent appointed one Ananthu in that place. According to the petitioner, the respondents 1 and 2 shirked their responsibility and placed him under the disposal of the third respondent Management, which was highly arbitrary and unfair. Had the respondents 1 and 2 issued directions under the Tamil Nadu Private Schools (Regulation) Act to provide employment to the petitioner, the third respondent would have no authority to deny employment to him. As the family of the petitioner was economically very poor, the case of the petitioner may be considered sympathetically. Hence, the petitioner had filed the writ petition seeking the relief stated supra.

5. Even though the writ petition was admitted on 21.9.2004, the respondents have not filed counter and only after the order of this Court, the respondents 2 and 3 have filed their counters on 29.8.2017 and 6.9.2017 respectively.

6. In its counter, the second respondent stated that no application for compassionate appointment has been received by the educational authorities from the petitioner. After the demise of the father of the petitioner, the petitioner joined 11th standard in the third respondent school during 1994-1995 and



he did not get through in 12th standard. Since the third respondent was the authority to appoint, retrench, etc. of staff, respondents 1 and 2 have no role in appointing the petitioner, however, they can only approve the appointment. As far as the appointment of Watchman in the place of Ganapathy is concerned, it has been stated that as per the usual procedure adopted by the school for appointment of watchman, the third respondent school made a requisition letter to the Department of Ex-Serviceman's Welfare for the appointment of suitable candidate for the post of watchman. Thereafter, the Jamalia Educational Society conducted an interview and selected a suitable candidate for the above post. According to the respondents 1 and 2, the writ petition is not maintainable and prayed for dismissal of the same.

7. Admitting the fact that the father of the petitioner was working as Drawing Master and he died on 5.3.1989 while he was in service, the third respondent filed counter stating that after the demise of his father, the petitioner joined 11th standard in the third respondent school during 1994-1995 and he did not get through in 12th standard in 1995-1996. According to the third respondent, it has every right to appoint staff and also to retrench staff as it is a minority school. It is also stated in the counter that in the year 2001, they received letter from the Chief Minister's Cell to consider the claim of the petitioner to appoint him on compassionate grounds, for that they have sent a reply informing that there was no vacancy existing to consider the case of the petitioner. According to the third respondent, the Government was not granting any aid to non-teaching staff. Hence, prayed for dismissal of the writ petition.

8. I heard Mr.S.N.Ravichandran, learned counsel for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 and 2 and Mr.A.Abdul Rahim, learned counsel for the third respondent and also perused the materials available on record.

9. The learned counsel for the petitioner submitted that despite several representations, the respondents have not considered the claim of the petitioner being appointed on compassionate grounds and the petitioner's father was the only bread winner of the family and after his demise his family was struggling to eke out their livelihood and also facing untold sufferings with acute poverty. He would submit that no one was in Government employment in his family and they have not owned any immovable property on their own. According to the learned counsel, though the respondents 1 and 2 were having supervisory and administrative control over the third respondent school, they have simply shirked their responsibility.



10. Countering the arguments, the learned Special Government Pleader submitted that since the third respondent school is a minority aided school, they are the authority to appoint and retrench anybody from the school and the respondents 1 and 2 have no role in considering the claim of the petitioner. As far as appointment of Watchman in the place of deceased Ganapathy is concerned, only after adopting the due process, the third respondent school Committee appointed the Watchman.

11. The learned counsel for the third respondent submitted that since the third respondent school was a minority, it has every right to appoint staff and also retrench staff. Though, the third respondent school received recommendation from the Chief Minister's Cell, since there was no vacancy at the relevant point of time, it has not considered the claim of the petitioner. In so far as the appointment of Watchman in the place of one Ganapathy is concerned, the Government has stopped making payment to the watchman and presently the watchman salary was being paid by the Management.

12. There was no dispute that the petitioner's father died on 5.3.1989 while he was in service in the third respondent school and the petitioner is his son and other legal heirs have given consent for giving compassionate appointment to the petitioner. It appears that at the time of death of deceased Syed Rahamadulla, the petitioner was aged approximately 11 years old and at the time of submission of application for compassionate appointment, the petitioner had completed his SSLC qualification.

13. In the representation dated 27.9.1995 submitted to the second respondent, the petitioner's mother categorically stated that her husband died on 5.3.1989 and her second son, the petitioner herein, had completed his SSLC qualification and had also completed 18 years old. In her representation, the petitioner's mother stated that her family was suffering from indigent circumstances. The said representation dated 27.9.1995 has been marked to the third respondent school also. Therefore, the contention of the learned Special Government Pleader that the Educational authorities have not received any application from the petitioner's mother or petitioner cannot be countenanced. Admittedly, no action has been taken by the respondent authorities on the representation of the petitioner's mother.

14. It appears that by the proceedings dated 17.3.1999, the first respondent advised the petitioner's mother to approach the third respondent for compassionate appointment for his son. It also appears that the Director of Employment and Training, Chennai forwarded the petition of Haseena, which was received



from the Chief Minister's Cell to the third respondent for taking action and report. Pursuant to which, the third respondent, by a letter dated 26.7.2001 informed the Chief Minister's Cell that no post was available to suit the petitioner according to his qualification. By the proceedings dated 19.9.2001, the first respondent directed the third respondent school to intimate the action taken on the grievance of Haseena, wife of deceased Syed Rahamadullah.

15. During the course of arguments, the learned counsel for the third respondent has produced the list of non-teaching staff post sanctioned and working. On a perusal of the same, this Court finds that there was no indication that from what date the non-teaching staff were performing their duties in the third respondent school. In her first representation dated 27.9.1995 itself, the petitioner's mother clearly stated the petitioner was SSLC qualified and aged 18 years and sought Clerical post on compassionate grounds. At the relevant point of time, the educational qualification for Clerical post was only SSLC pass. Nothing has been produced by the third respondent to show that during the year 1995, there was no Clerical post vacant in their school. The additional typed set of papers produced by the learned counsel for the third respondent contains the details of non-teaching staff appointed after the death of Rahmathullah i.e., after 5.3.1989, wherein one J.M.Imran Abdul Quadir was appointed by the third respondent Management in the post of Record Clerk on 16.5.2011. No explanation was forthcoming from the third respondent as to why the petitioner was not considered in that post at that time.

16. Though the third respondent is a minority aided school, it has control over the educational authorities like the respondents 1 and 2 and they cannot shirk their responsibility. When a breadwinner of the family died in harness and the family was struggling to eke out their livelihood and was also facing acute poverty, the respondent authorities or the third respondent cannot turn a blind eye and keep silent without giving any suitable employment to anyone of the family. As rightly stated by the petitioner, way back in the year 1997, when the third respondent school appointed Watchman, the petitioner was eligible to get appointment on compassionate grounds. Of course, the third respondent by adopting the procedure appointed the Watchman and the same was endorsed by the second respondent in its counter. Therefore, this Court don't want to comment upon the said appointment. This Court is concerned with the eligibility of the petitioner to be appointed on compassionate grounds.



17. It is said of the third respondent school that there was no vacancy existing in considering the petitioner to be appointed on compassionate grounds. It is to be noted that if the request of the petitioner's mother seeking compassionate appointment for the petitioner was considered by the third respondent or the respondent authorities when she made request in the year 1995, the petitioner would have got appointment at that time itself. For this, no fault can be attributed against the petitioner.

18. The very object of appointment of dependent of the deceased employee who die in harness is to give some relief from the unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread winner who had left the family in penury and without any means of livelihood.

19. In the case on hand, immediately after attaining the age of 18 years, the petitioner's mother had submitted an application seeking appointment on compassionate grounds to the petitioner and at the time of the submission of the application, the petitioner was possessing SSLC qualification. No orders have been passed either by the third respondent or respondents 1 and 2 that the petitioner is not eligible to get an appointment on compassionate grounds.

20. Considering the pathetic situation of the family of the petitioner and the fact that the respondent authorities have failed to consider the claim of the petitioner since 1995 for one reason or the other and as nothing has been produced to show that the petitioner is not entitled to get compassionate appointment, this Court holds that the petitioner is entitled to get appointment on compassionate grounds in a suitable post in the third respondent school.

21. In the result,

- (a) this writ petition is allowed by directing the 3rd respondent school to appoint the petitioner in any suitable post on compassionate grounds within a period of four weeks;
- (b) the 3rd respondent is directed to send the proposal for approval of the petitioner's appointment to be made as per the order of this Court;



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(c) the respondents 1 and 2 are directed to approve the appointment of the petitioner, if any, made by the 3rd respondent.

(d) the said exercise shall be completed within a period of eight weeks from the date of receiving the proposal sent by the 3rd respondent. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

To

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

2.The Chief Education Officer,
Chennai.

3.The Correspondent,
Jamalia Higher Secondary School,
Perambur, Chennai - 12.

+ 1 cc to Government Pleader SR.84732

W.P.No.26887 of 2004

(CS-VIII)

EU(27/09/2018)