

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.265 of 2017
and
C.M.P.No.4103 of 2017

Selvi M.Latha ... Appellant

-vs-

- 1.The State of Tamil Nadu rep.by
its Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The District Educational Officer,
Vellore, Vellore District. Respondents

Appeal filed filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.4732 of 2015 dated 02.12.2016, filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 3rd respondent in his proceedings Na.Ka.No.5928/A1/2009 dated 30.01.2015 quash the same and direct the respondents to appoint the petitioner as Junior Assistant on Compassionate as per the list published as on 31.12.2012 in respect of Vellore District and confer all the consequential benefits.

For Appellant :: Mr.P.Ganesan for
M/s.C.S.Associates

For Respondents :: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This writ appeal has been filed against the order passed by this Court in W.P.No.4732 of 2015 dated 02.12.2016, wherein the prayer made by the appellant/ writ petitioner to quash the order passed by the third respondent in his proceedings Na.Ka.No.5928/A1/2009 dated 30.01.2015 rejecting the claim of compassionate appointment, and to direct the respondents to appoint the appellant as Junior Assistant on compassionate ground as per the list published as on 31.12.2012 in respect of Vellore District and confer all the consequential benefits, has been rejected.

2.The case of the appellant is that her father namely N.Munusamy died on 04.08.2001, while he was working as Secondary Grade Assistant in Panchayat Union Elementary School, Panapakam, Nemili Union, leaving behind four children viz., M.Boopalan, M.Dhinakaran, M.Srinivasan and the appellant herein. As per the Scheme of Compassionate Appointment, the appellant's elder brother M.Boopalan applied for compassionate appointment on 21.10.2002 and since there was ban on appointments between 2001 and 2006, her brother was not considered for compassionate appointment. In the meanwhile, her elder brother M.Boopalan met with an accident on 21.02.2004 and expressed his unwillingness to take appointment as his right lower limb got injured and steel plate was fixed. The appellant, immediately after getting 'No Objection Certificate' from other brothers, applied for compassionate appointment. However, the third respondent passed an order dated 11.01.2014 rejecting her claim for compassionate appointment on the ground that there is no provision to give compassionate appointment to other legal heirs as if the compassionate appointment could be given only for the first legal heir. Challenging the same, the appellant filed W.P.No.5890 of 2014 and this Court, vide order dated 28.02.2014, directed the respondents to consider her claim for compassionate appointment. However, the third respondent, vide order dated 09.05.2014, rejected the appellant's request on the ground that the sons of the deceased are employed and therefore, compassionate appointment cannot be given, by placing reliance upon G.O.Ms.No.998, Labour and Employment Department dated 02.05.1981. Challenging the order of rejection, the appellant also filed W.P.No.21278 of 2014 and this Court, vide order dated 15.09.2014, directed the respondents to reconsider the claim of the appellant for compassionate appointment. Since the said order was not complied with, the appellant filed Cont.P.No.64 of 2015, wherein this Court ordered notice and pursuant to the same, the respondents once again rejected the appellant's request vide order dated 30.01.2015, based on which the contempt

petition was closed by this Court. Challenging the order dated 30.01.2015, the appellant filed a writ petition in W.P.No.4732 of 2015.

3.Before the writ Court, it was contended on behalf of the appellant/ writ petitioner that on the date of submitting the application for compassionate appointment, none of her brothers were employed and that is the reason why, the appellant's name was included in the Waiting List maintained for compassionate appointment and during the intervening period, two of her brothers got appointment in Central and State Governments respectively and one other brother got engaged in power loom business. It was further contended that the appellant is eking out her livelihood only with the support of her brothers. The learned Government counsel appearing for the respondents in the writ petition had drawn the attention of this Court to the counter affidavit wherein it has been stated that two of the brothers of the appellant, namely Boopalan and Srinivasan are employed in the Central Government and State Government respectively and another brother is doing power loom profession and the appellant has not married so far and living with her brother, which was admitted by the appellant herself in her letter dated 24.01.2015 and hence, it is evident from the said letter that the family is having sufficient income and not in indigent situation. After considering the arguments made on either side, the learned single Judge dismissed the writ petition on the ground that they have sufficient income to protect the family and hence, the appellant has not fulfilled the basic requisite of the scheme for appointment on compassionate grounds. Challenging the same, the present writ appeal has been filed.

4.The learned counsel for the appellant has submitted that after the demise of the father of the appellant, the three brothers of the appellant confronted with the appellant and went out of the family and settled themselves and living separately. It is also submitted that nobody is available to take care of the appellant and she remains unmarried. Stating so, the learned counsel for the appellant prayed for a direction to the respondents to reconsider the claim of the appellant.

5.Heard the learned Special Government Pleader on the submissions made by the learned counsel for the appellant.

6.Taking note of the submissions made by the learned counsel for the appellant that the three brothers of the appellant confronted with her and went out of the family and settled themselves and living separately and that nobody is available to take care of her and she remains unmarried, we direct the respondents to reconsider the matter and to verify the genuineness of the claim made by the appellant as regards the

hardship and the pathetic situation being faced by her, whether the claim is legitimate or not for the purpose of granting compassionate appointment due to the death of her father and take an appropriate decision in the matter. Such an exercise shall be completed within a period of two months from the date of receipt of a copy of this judgment.

7. With the above observation, the writ appeal is allowed in part. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Chennai-600 009.

2. The Director of School Education,
College Road, Chennai-600 006.

3. The District Educational Officer,
Vellore, Vellore District.

+1 cc to the Government Pleader High Court Madras
sr 71998

+1 cc to M/s.C.S.Associates Advocate sr 72320

W.A.No.265 of 2017
and
C.M.P.No.4103 of 2017

WEB COPY

ppa(co)
aa31/10/2017