

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2017

PRONOUNCED ON: 23.08.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Appeal No.766 of 2017

K.Ramakrishnan

Appellant

vs

1.The Director of Elementary Education,
DPI Campus,
Chennai - 600 006.

2.The District Elementary Educational Officer,
Ariyalur.

3.The Assistant Elementary Educational Officer,
Veppanthattai,
Perambalur District.

Respondents

Prayer:- Writ Appeal has been filed under Section 15 of the Letter Patent Act, against the order of this court dated 24.08.2011 in W.P.No.21361 of 2009.

Prayer in W.P.No.21361 of 2009:

Writ petition filed under Article 226 of the constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings in Na Ka No 2555/A1/07 dated 30.07.2007 passed by the Second respondent and quash the same and consequently to direct the respondents to appoint the petitioner and compassionate ground.

For Appellant : Mr.M.Rajendiran

For Respondents: Mr.R.Prathap Kumar,
Additional Government Pleader

JUDGMENT
G.Jayachandran.J.,

The father of the appellant died in harness on 04.01.1983 while serving as Secondary Grade Teacher. The appellant was 2 years old at the time of his father's death. After he attained majority, made a request to the respondents for compassionate appointment on 08.09.1999. The Assistant Elementary Educational Officer, Veppanthattai Division forwarded his application with his recommendation to the District Elementary Educational Officer, Ariyalur. While so, his mother has given a separate request to the Director of Elementary Education to give appointment to her son under compassionate ground and the same was taken up for process vide the proceedings of the Director of Elementary Education dated 03.06.2004. The widow of the deceased employee was asked to furnish certain documents for necessary action.

2.It appears from the records that the application was rejected on the ground that instead of seeking compassionate appointment for herself within three years from the date of death of Mr.Kaliaperumal, the deceased employee, the application has been made belatedly for the son who is the last issue of the family, while the other eligible candidates were available in the family at the time of the employee's death. However, the District Elementary Educational Officer citing the poverty situation of the family, has requested the Director of Elementary Education to reconsider the request for compassionate appointment. After reconsidering the application, the District Elementary Educational Officer rejected the application on 30.07.2007 on the following lines:-

".....it has been informed by the Director that upon examining the proposal for seeking compassionate appointment, the same has been rejected since there is no evidence submitted to the effect that the first legal heir viz., the wife of the deceased Government employee has not requested for any appointment under compassionate ground and that legal heirs 2, 3 and 4 have also not requested for any appointment and that after long years consequent to the death of the Government servant (died on 1983), the 6th legal heir has requested for appointment on 08.09.1999, it is hereby concluded that the family of the deceased Government employee is not in poverty line and accordingly the proposal is

rejected."

3.The above said order was impugned in W.P.No.21361 of 2009. The learned Single Judge dismissed the Writ Petition relying on the judgments of the Hon'ble Supreme Court in Bhawani Prasad Sonkar vs. Union of India and others reported in (2011) 4 SCC 209 and in Local Administration Department and another vs. M.Selvajayagam @ Kumaravelu reported in (2011) 5 MLJ 892 (SC). Hence, the present Writ Appeal challenging the order of the learned Single Judge, has been filed by the appellant.

4.The learned counsel for the appellant submitted that the widow of the deceased employee is an illiterate lady. She had no knowledge to seek employment under compassionate appointment for herself or her daughters immediately after her husband's death. After exhausting all the retirement benefits, she is pushed to poverty which has prompted her to seek compassionate appointment. The applicant who attained majority in the year 1999, applied for compassionate appointment. Hence, the reasoning given by the authorities to reject his claim is not in consonance with the Rules and Procedures governing appointment on compassionate ground. The learned single Judge without considering the views of the Hon'ble Supreme Court in subsequent judgments has erroneously dismissed the appeal. In support of his argument, the learned counsel for the appellant relied upon the following judgments:-

"1.Jeba Mary vs. The Chairman, Tamil Nadu Electricity Board, The Chief Engineer (Personnel) and the Superintending Engineer (MANU/TN/0674/2011);

2.Satish Kumar Vs State of Tamil Nadu (MANU/TN/4959/2011) ;

3.Kamatchi vs The Chairman, the Chief Engineer and the Superintending Engineer (MANU/TN/1474/2013) and

4.P.Sathiarman vs. The Secretary to Government, the Chief Engineer and the Superintending Engineer (MANU/TN/1523.2013)"

5.The reading of the above judgments cited by the learned counsel for the appellant, what could be seen on fact is, at the time of employee's death on harness, none in the family were found eligible for appointment or the applications were made in time but, considered later for other reasons. Whereas, the facts of the case before us is, at the time of Mr.Kaliaperumal's death, his wife and two major children were eligible for appointment but, they did not seek compassionate appointment for

them. They have waited for 16 years and made the request for compassionate appointment after the appellant attained majority. Learned Single Judge has presumed that they were not in dire necessity of an employment immediately on the death of the headman of the family. In such case, the judgments of the Hon'ble Supreme Court in Bhawani Prasad Sonkar vs. Union of India and others (cited supra) and in Local Administration Department and another vs. M.Selvajayagam @ Kumaravelu (cited supra), are the apt judgments to rely upon. The learned Single Judge has dismissed the Writ Petition holding that the very fact, no application was filed immediately after the death of Mr.Kaliaperumal by his wife and major daughters is singularly enough to infer that they are not in need of any succor immediately on the death of the family head.

6.The learned counsel for the appellant submitted that seeking compassionate appointment, on attaining majority of sole male member of the family has to be considered from socio-economic perception. This is a case where a Secondary Grade Teacher died in harness at the age of 51 years leaving behind his widow aged about 38 years, 4 daughters and one son. When he died, except two daughters, other three children were minors and the appellant herein was hardly aged 2 years old at that time. From the letter of District Elementary Educational Officer dated 16.02.2005, it appears that the family is surviving only on the family pension and have no other source of income. Still they live in poverty so, the case of the appellant deserves reconsideration.

7.We have no second opinion that the family of a Government servant who died in harness should be given succor to tide over the unexpected crises. So, employment out of turn, should be provided on compassionate ground. However, such appointment should be within the following parameters of the directions laid down by the Hon'ble Supreme Court in Bhawani Prasad Sonkar vs. Union of India and others (cited supra):-

“(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 on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course 1 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 appointments should be only to the lowest category that is Class III and IV posts."

8.The learned Single Judge has indicated, 'Why the case of the appellant seeking compassionate appointment after long lapse fall out of the direction. So, we do not find any reason to defer the learned Single Judge view, the Writ Appeal is liable to be dismissed.

9.In the result, the Writ Appeal is dismissed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

jbm

To

1.The Director of Elementary Education,
DPI Campus,
Chennai - 600 006.

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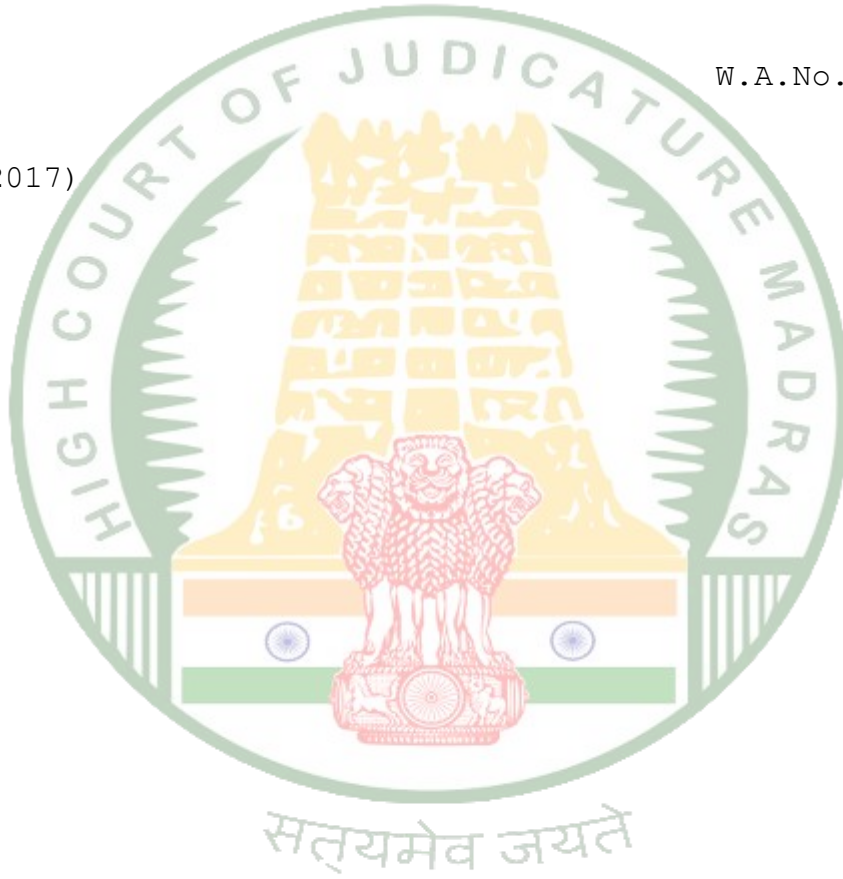
2.The District Elementary Educational Officer,
Ariyalur.

3.The Assistant Elementary Educational Officer,
Veppanthattai,
Perambalur District.

+1 Cc to Mr. M. Rajendran, advocate sr 61546.

W.A.No.766 of 2017

KS (CO)
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