

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19/7/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
&
THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.799 of 2017
and
C.M.P.No.11094 of 2017

T.Vimala ...Petitioner/Petitioner

Vs.

1. The State of Tamil Nadu,
Rep, by its Secretary to Government,
School Education Department,
Secretariat, Chennai.
2. Directorate of School Education,
D.P.I. Complex, Chennai.
3. The District Collector,
Tiruppur District.
4. The Chief Educational Officer,
Tiruppur District.
5. The District Educational Officer,
Tiruppur District.
6. The District Elementary,
Educational officer,
Tiruppur District.
7. The Assistant Elementary,
Educational officer,
Tiruppur (North),
Tiruppur.

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
to set aside the order passed by this Court in
W.P.No.10847/2017 dated 27/4/2017. Writ petition presented
under Article of th constitution of India, praying to issue a

writ of certiorarified Mandamus, calling for the records pursuant to the proceedings passed by the 5th respondent in Na.Ka. NO.7196/ A1/ 2014 dated 18.02.2016 and quash the same and consequently direct the 5th respondent to appoint the petitioner on compassionate ground.

For Petitioner : Mr.UM.Ravichandran

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Challenge in this appeal, is to an order made in W.P.No.10847 of 2017, dated 27/4/2017, by which, the writ Court, has declined, to accept the contentions of the petitioner/appellant, to issue a writ of Certiorarified Mandamus, to quash the order of the District Educational Officer, Tiruppur District, in R.C.No.7196/A1/2014, dated 18/2/2016, by which, the said authority, has rejected the request of the petitioner/appellant, for employment assistance, on compassionate ground.

2. Facts deduced from the material on record are that, on 19/3/2010, mother of the petitioner/appellant, Headmistress of Panchayat Union Middle School, Thoravalur, Tiruppur District, died in harness, leaving behind her husband, the appellant's younger sister, as surviving heirs. Father's eyesight is affected, due to high Blood pressure and unable to work. The writ petitioner/appellant has acquired a degree, Bachelor of Literature (Tamil), in the year 2012 and M.A., in the year 2015, through Distance Education System, Annamalai University. At the time of filing of the Writ petition, the petitioner, was pursuing final year B.Ed Course, through Regular stream, in Sasurie College of Education, Vijayamangalam.

3. Contending inter alia that the family was in penury, writ petitioner/appellant, has made a representation, dated 7/6/2010, to the District Educational Officer, Tiruppur District, Tiruppur/fifth respondent, seeking employment assistance, on compassionate grounds. The representation has been returned, on 6/2/2013, for want of certain documents. According to the petitioner, defects pointed out have been rectified and application was re-submitted immediately. There was no response and therefore, the writ petitioner/appellant was constrained, to submit a representation, dated 3/2/2014, to the District Collector, Tiruppur District/third respondent. Under

the Right to Information Act, 2005, the petitioner/appellant's sister, made a representation, on 13/1/2016, to the Secretary to the Government, School Education Department, Secretariat, Chennai and the Directorate of School Education, Chennai/respondent Nos. 1 and 2, respectively.

4. Finally, on 18/2/2016, the District Educational Officer, Tiruppur District/fifth respondent, vide proceeding, in Na.Ka.No.7196/A1/2014, dated 18/2/2016, rejected the application submitted, for employment assistance, on the grounds that, as per G.O.Ms.No.998, Labour and Employment Department, dated 2/5/1981, if any one of the family members of the deceased Government servant, is in earning position, then, it cannot be considered that the family is in indigent position and that he has also stated that since the appellant's younger sister, was enrolled as a lawyer, on 30/11/2014, request of the appellant for employment assistance, on compassionate ground, is not feasible.

5. Being aggrieved by the same, the petitioner/appellant has filed W.P.No.10847 of 2017, to quash the order of the District Educational Officer, Tiruppur District/fifth respondent, passed on 18/2/2016 and prayed for a consequential direction, to appoint him, in any suitable post.

6. By observing that the appellant's father is receiving monthly family pension and that the appellant's younger sister is a practicing lawyer, and that the scheme of employment assistance, on compassionate ground is carved out only to help a poverty-stricken family, due to the sudden demise of the breadwinner, writ Court held that there are no grounds, to interfere with the impugned order of the District Educational Officer, Tiruppur District/fifth respondent.

7. Assailing the correctness of the order of the writ Court and based on the decision of the Hon'ble Supreme Court, in Canara Bank and another Vs. M.Mahesh Kumar, reported in (2015) 7 SCC 412, Mr.UM.Ravichandran, learned counsel for the petitioner/appellant submitted that receipt of family pension, by the surviving heirs, cannot be a ground, to deny employment assistance on compassionate grounds.

8. Further, inviting the attention of this Court, to the date of death of the appellant's mother, on 19/3/2010, the date of representation of the appellant, 7/6/2010, to the District Educational Officer, Tiruppur District/fifth respondent, for employment assistance, on compassionate grounds, 30/11/2014, the date on which her younger sister enrolled as a lawyer, certificate, dated 18/7/2011, issued by the office of the Tahsildar, Tiruppur District, stating that the family was in

penury, and finally, 18/2/2016, the date of order of the District Educational Officer, Tiruppur, who rejected the request, Mr.UM.Ravichandran, learned counsel for the petitioner/appellant submitted that employment assistance on compassionate grounds is a beneficial scheme and therefore, the District Educational Officer, Tiruppur District/fifth respondent, ought to have considered the application, immediately, in proper perspective, with reference to the object and scheme of employment assistance, but the said authority is carried away by the fact that the appellant's younger sister has acquired a law degree and enrolled as an advocate, after, four years and 8 months, from the death of the breadwinner. He further contended that the fifth respondent, ought to have considered the application for employment assistance, as to whether the family was in indigent circumstances, at the time, when the application was made. On the above said grounds, he prayed for reversal of the order made by the writ Court, and to issue suitable directions.

9. Per contra Mr.V.Jayaprakash Narayanan, learned Special Government Pleader submitted that the impugned order has been issued, taking note of the guidelines made in G.O.MS.No.998, and that the same does not require any interference. In as much as the District Educational Officer, Tiruppur District, Tiruppur has not taken note of the certificate, issued by the Tahsildar, he requested this Court, that the matter may be remanded to the said authority, for reconsideration.

10. Learned Special Government Pleader fairly admitted that reasoning of the District Educational Officer, Tiruppur District/fifth respondent, in rejecting the application, on the ground of receipt of a family pension, is not tenable.

11. Heard the learned counsel for the parties and perused the materials available, on record.

12. Admittedly, breadwinner of the family, mother of the appellant, Headmistress of Panchayat Union Middle School, Thoravalur, Tiruppur District, died on 19/3/2010, in harness,. Application, for employment assistance has been submitted by the appellant, for suitable employment, on the basis of educational qualifications. One of the requirements for employment assistance on compassionate grounds is that the applicant has to submit a certificate from the Tahsildar, to prove that he or she, is a legal heir of the deceased, and that the family is in indigent circumstances.

13. On the request for issuance of a legal heir certificate and indigent circumstance, after enquiry, the Tahsildar, Tiruppur District, has issued two certificates, dated 24/4/2010 and 18/7/2011, respectively. Certificate, dated 24/4/2010 is a legal heir certificate, which shows that at the time of issuance of said certificate, the appellant was aged 21 years, and unmarried. Certificate, dated 18/7/2011 of the Tahsildar, Tiruppur District, shows that, after the demise of the breadwinner, father was not remarried. There was no income for the family of the deceased, except her salary. After her demise, family was in indigent circumstances. The Tahsildar has also noted that a sum of Rs.1,71,108/-, as the retiral benefits. Thus, in the combined certificate issued, for the purpose of employment assistance on compassionate grounds, dated 18/7/2011, Tahsildar, Tiruppur District has made it clear that the family was in indigent circumstances, at the time, when the application for employment assistance was made.

14. Appellant's younger sister has enrolled, as an advocate, on 30/11/2014, after nearly four years and eight months, after the demise of the breadwinner, on 19/3/2010. As rightly contended by the learned counsel for the petitioner/appellant, employment assistance, on compassionate grounds, being beneficial in nature, the application dated 27/4/2017, submitted by the appellant, ought to have been considered, immediately, taking note of the indigent circumstances of the family, and that the same should not be unduly delayed.

15. Keeping the application submitted for employment assistance, on compassionate grounds, pending for nearly six years, in spite of proof of indigent in circumstances, at the time of making an application, and taking note of a subsequent event, in the case on hand, acquisition of B.L. Degree, by the younger sister of the appellant and thereafter, to deny employment assistance, on the grounds that there is an earning member in the family, cannot be countenanced, for the reason that case of the appellant, ought to have been considered, no sooner an application is made. Though Mr.V.Jayaprakash Narayanan learned Special Government Pleader, prayed that the matter be remanded back to the District Educational Officer, Tiruppur District/fifth respondent, for fresh consideration, for the reason stated supra, we are not inclined to accept the said contentions.

16. With due respect, reasoning of the Writ court, for rejecting the prayer, to issue a Writ of Certiorari, cannot be accepted. Merely because, the younger sister of the petitioner/appellant has enrolled as a lawyer, after four years

and eight months, from the date of demise of the bread winner, it cannot be concluded that there was no indigent circumstances, at the time of submission of the application. Effort of the legal representative to acquire, educational qualification, de horse the untimely death of the bread winner of the family, in our considered view, ought not to have been put against a survival heir to seek employment assistance, on compassionate grounds. Certificate of the Revenue official, proving indigent circumstances, no sooner, the bread winner died, ought to have been considered, keeping in mind, the object of the scheme of employment assistance, on compassionate grounds, which is to mitigate the hardship faced by the family, on the sudden demise, and not after six years.

17. At this juncture, we deem it fit to consider a decision of the Hon'ble Apex Court in Smt.Sushma Gosain & Others Vs. Union of India & Others, reported in 1989 4 SCC 468, wherein the Hon'ble Apex Court, observed as follows:-

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

18. In Balbir Kaur & Anr. Vs. Steel Authority of India Ltd., & Ors {(2000) 6 SCC 493, while dealing with an application made by a widow, for employment assistance, on compassionate grounds, applicable to Steel Authority of India, the contention raised by the employer was that since she is entitled to get the benefit under Family Benefit Scheme, assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention at paragraph 13, the Hon'ble Apex Court, held as under:-

"But in our view, this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the

death of the breadearner can only be absorbed by some lump-sum amount being made available to the family that is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter, reigns and it is at that juncture, if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation. Referring to Steel Authority of India Ltd's case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents family is having any other income to negate their claim for appointment on compassionate ground."

19. In the case of Bhawani Prasad Sonkar Vs. Union of India & Ors, reported in {(2011) 4 SCC - 209}, the Hon'ble Apex Court held thus:-

"20 (ii). An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period.

20. In Canara Bank & Anr Vs. M.Mahesh Kumar , reported in {(2015) 7 SCC - 412}, the Hon'ble Apex Court, at paragraph No.15, has held as follows:-

"In so far as the contention of the appellant-Bank that since the respondents family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment."

21. If a surviving heir has acquired a professional qualification, four years and 8 months, after the demise of the bread winner of the family, the same should not be taken as disqualification, to consider the application of another surviving heir, to claim employment assistance on compassionate grounds. To alleviate the distress and to mitigate the hardship faced by the family, on account of sudden demise of the breadwinner, employment assistance on compassionate grounds,

should be considered, promptly without delay, and not after a long period, in the hand on hand six years.

22. For the reasons stated supra, writ petition is allowed and the order made in R.C.No.7196/A1/2014, dated 18/2/2016, of the District Educational Officer, Tiruppur District/fifth respondent and the order writ Court in W.P.No.10847 of 2017, dated 27/4/2017, are set aside.

23. The District Educational Officer, Tiruppur District/fifth respondent, is directed to consider the case of the appellant, for employment assistance on compassionate ground, in any of the suitable posts, equivalent to her educational qualifications, as per law, within a period of four weeks, from the date of receipt of copy of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai.
2. Directorate of School Education,
D.P.I. Complex, Chennai.
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Educational officer,
Tiruppur (North), Tiruppur.

+ 1 cc to Mr. U.M. Ravichandran, Advocate SR.50488

+ 1 cc to Government Pleader Sr.50994

W.A.No.799 of 2017 and
C.M.P.No.11094 of 2017

GR(CO)

EU 17/08/17