

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.20700 of 2012

S.Arumugham

... Petitioner

Vs

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

2.The District Educational Officer,
Kovilpatti,
Thoothukudy District.

...Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records of the 1st respondent issued in Na.Ka.No.115825/J3/2010, dated 29.04.2011 and quash the same and issue a consequential direction to the respondents to appoint the petitioner on compassionate ground in suitable post in Government service, with service and monetary benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.R.Govindasamy
Special Government Pleader

सत्यमेव जयते
O R D E R

This writ petition has been filed seeking writ of certiorarified mandamus calling for the records of the 1st respondent in Na.Ka.No.115825/J3/2010, dated 29.04.2011 and quash the same and to direct the respondents to appoint the petitioner on compassionate ground in suitable post in Government service, with service and monetary benefits.

2. The petitioner's father by name A.Subramanian, who was an employee in the Education Department, died in harness on 30.10.1996. Seeking employment on compassionate ground, the petitioner has made applications on 08.11.2006 and on 13.01.2007. However, the same were not considered by the

respondents. Therefore, he has filed W.P.No.4191 of 2007 before this Court seeking for a direction to the respondents to appoint the petitioner on compassionate ground in any suitable post as per G.O.Ms.No.155, Labour and Employment Department, dated 16.7.1993 by considering the representations dated 08.11.2006 and 13.1.2007. By an order dated 8.2.2007, this Court, directed the respondents to consider the representations of the petitioner taking into consideration of G.O.Ms.No.155, dated 16.7.1993 and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of the order.

3. Pursuant to the order of this Court, the 1st respondent has passed an order dated 10.04.2007 rejecting the request of the petitioner holding that petitioner's sister, who was then unmarried, was helping the family and she was in Government service. She has got married only on 14.6.1998. Since the petitioner's family was not in distress, the 1st respondent rejected the request of the petitioner. Challenging the order of the 1st respondent dated 10.04.2007, the petitioner had filed W.P.(MD) No.809 of 2008.

4. By an order dated 31.1.2008, the learned Single Judge dismissed the writ petition. Aggrieved by the same, the petitioner preferred W.A.(MD) No.510 of 2010. By the judgment dated 28.2.2011, writ appeal came to be disposed of giving direction to the 1st respondent to consider the claim afresh as to whether the appellant was eligible to get compassionate appointment as he had applied before the expiry of three years from the date of death of his father and produced a certificate dated 31.7.1998 stating that the petitioner's sister got married on 14.6.1998 and living separately without giving any support to the family. Hence, necessary fresh orders shall be passed by the 1st respondent within a period of six weeks from the date of receipt of a copy of the judgment.

5. Pursuant to the judgment passed in W.A.(MD) No.510 of 2010, the 1st respondent has passed the impugned order dated 29.4.2011 once again rejecting the request of the petitioner. Challenging the same, the petitioner has filed the present writ petition.

6. I heard Mr.R.Saseetharan, learned counsel appearing for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents and perused the entire materials available on record.

7. Challenging the impugned order, the learned counsel for the petitioner submitted that the 1st respondent has rejected the claim of the petitioner by relying upon old G.O.Ms.No.998 dated 02.5.2981; G.O.Ms.No.560, dated 03.8.1977 and G.O.Ms.No.42, dated 12.3.2007 without considering the fact that the

petitioner's case squarely comes under G.O.Ms.No.155, dated 16.7.1992 which alone governs the case of the petitioner. He would submit that the 1st respondent failed to see that G.O.Ms.No.560 and G.O.Ms.No.998 were superseded by G.O.Ms.No.155 which is available on the date of the death of the father as well as on the date of the application of the petitioner which was made on 18.8.1998 and G.O.Ms.No.42 dated 12.3.2007 was not available either on the date of death of a Government servant or on the date of application of the petitioner. He would further submit that the impugned order of the 1st respondent is illegal and contrary to the facts and circumstances of the case and prayed for setting aside the same.

8. Per contra, the learned Special Government Pleader appearing for the respondents submitted that the petitioner's family was not in indigent circumstances as on the date of the death of the deceased employee, as the family was fully supported by the sister of the petitioner, who is also a Government servant. She has got married only in the year 1998. Therefore, the petitioner is not entitled for appointment on compassionate ground.

9. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

10. It is true that appointment in Government service should be made only in accordance with the relevant Service Rules. Appointment on compassionate ground is only a concession shown, deviating from the said established procedure contained in the Service Rules only with a view to rescue the family from indigent circumstances.

11. In the present case, the petitioner's father died on 30.10.1996 and the present writ petition is third round of litigation. The date of death of petitioner's father is the crucial date for the purpose of considering whether a legal heir of the deceased employee should be given employment on compassionate ground to rescue the family from distress or not. There is no quarrel that on 30.10.1996, the elder sister of the petitioner was in Government service and was living as a joint family with the petitioner at that time. There is also no dispute that the elder sister of the petitioner has got married on 14.6.1998.

12. Thus, it is clear that till 14.6.1998, the elder sister of the petitioner supported the family and she was living in her matrimonial home away from the petitioner's family thereafter. After the marriage of the petitioner's elder sister, the petitioner, his mother and younger sister were living jointly and the petitioner is the only male member to earn the

livelihood of the family. Since the petitioner was not employed, he made a representation on 18.8.1998 seeking appointment on compassionate ground by placing reliance upon G.O.Ms.No.155, dated 16.7.1993. Since no action was taken, the petitioner sent reminder representations dated 08.10.2002, 02.6.2006 08.11.2006 and 13.1.2007. Despite receipt of representations, the respondents have not taken any action. Therefore, the petitioner had filed W.P.No.4191 of 2007 before this Court.

13. By an order dated 08.2.2007 in W.P.No.4191 of 2007, the learned Single Judge of this Court held as under:

"3.Considering the above facts and circumstances of the case the respondents are directed to consider the representations of the petitioner dated 08.11.2006 and 13.01.2007 taking into consideration of the Government Order in G.O.Ms.No.155 Labour and Employment Department, dated 16.7.1993 and pass appropriate orders within a period of 8 weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly."

14. Pursuant to the order of this Court dated 8.2.2007 passed in W.P.No.4191 of 2007, the 1st respondent considered the representation and rejected the claim of the petitioner vide order dated 10.4.2007. Challenging the same, the petitioner filed W.P.(MD) No.809 of 2008 before this Court. By an order dated 31.1.2008, the writ petition came to be dismissed by the learned Single Judge of this Court. Challenging the same, the petitioner preferred writ appeal in W.A.(MD) No.510 of 2010.

15. By the judgment dated 28.02.2011, a Division Bench of this Court, disposed of the writ appeal by observing as under:

"4.In view of the above, the writ appeal is disposed of giving direction to the first respondent to consider afresh as to whether the appellant is eligible to get compassionate appointment as he has applied before the expiry of three years from the date of death of his father and produced a certificate dated 31.7.1998 stating that the petitioner's sister got married on 14.06.1998 and living separately without giving any support to the family. Hence, necessary fresh orders shall be passed by the first respondent within a period of six weeks from the date of receipt of a copy of this order. No costs."

16. Pursuant to the direction of the Division Bench of this Court, the 1st respondent considered the request of the petitioner and rejected the claim on the ground that on the date

of death of Subramanian, his daughter was in Government service and supported the family and after the death only she got married on 14.6.1998 and living separately and the family was not in indigent circumstances.

17. When the petitioner has produced a certificate obtained from the Revenue Divisional Officer to the effect that her sister after her marriage is living separately and was not supporting the family of the petitioner and also when the Division Bench of this Court specifically issued direction to the first respondent to consider the matter afresh on the aspect that the petitioner's sister was not supporting the family, the 1st respondent ought to have considered the claim of the petitioner since the intention of the Government is not to reject the request for compassionate ground appointment on the state of affairs existing in the family as on the date of death of the Government servant as changes in the family will occur after the death of the Government servant. The 1st respondent ought not to have rejected the request of the petitioner only on the ground that on the date of death of his father i.e., on 30.10.1996, his elder sister was working, which is too technical.

18. It is an admitted fact that the petitioner's sister got married within 1½ years of the death of the petitioner's father and left with her husband from the family. The intention of the Government is not to leave the deceased Government servant in indigent circumstances within a period of 1½ years. The scheme of compassionate ground appointment is to give relief to the deceased Government servant and therefore, prescription of three years period is given to ascertain the state of affairs of the family.

19. G.O.Ms.No.155, dated 16.7.1993 stipulates if a member of the family is already in employment and supports the family then the restriction may be applied. When a dependant of the family is employed, the factors to be ascertained are, whether he/she is regularly employed and is actually supporting the family. If that person was employed even before the death of the Government servant and was living separately without extending any help to the family, then the case of other eligible dependants will be considered. However, the restriction that only one of the dependants will be entitled for appointment on compassionate grounds will continue. Only the dependants of the deceased Government servant viz., wife/husband/son/unmarried daughter will be eligible for appointment. If the widow is not educationally qualified/eligible for appointment, she could be given a job like sweeper. The Government also direct that a married daughter who is deserted by her husband and living with the family of the deceased Government servant and widowed or divorced daughter living with the family may be considered, if

the widow of the deceased Government servant gives her consent in writing.

20. In the present case, the 1st respondent failed to see that as per G.O.Ms.No.155, dated 16.7.1993, when the person in the family is already in employment, the factors to be considered are that whether the person employed in the family is in a regular employment and that if the person got married and living separately. The Government Order further says that if the employed person in the family is living separately without extending any help to the family, then the case of other dependents is to be considered. In the case on hand, the petitioner has produced living certificate of the petitioner's sister Ganapathy issued by the Tahsildar, Sivakasi certifying that Ganapathy, wife of Kannan and daughter of Late Subramanian was residing permanently in Door No.1/587, N.G.O. Colony, Thiruthangal Village, Sivakasi Taluk, Virudhunagar District after the marriage and she was not extending any help to the family of the petitioner.

21. The petitioner's sister was employed as on the date of the death of the Government servant Subramanian and left the family within 1 ½ years of death on marriage. Such a contingency will occur in every family. Therefore, the said contingency cannot be a ground to reject the petitioner's case. Since the earning member of the family i.e., the sister of the petitioner was left on marriage which is the expected contingency and such a contingency occurred in the petitioner's family within a period of three years of the death of Subramanian, the claim of the petitioner is to be considered sympathetically for appointment on compassionate ground.

22. The 1st respondent while passing the impugned order failed to see that the intention of the Government gathered from the Government Orders issued for appointment on the compassionate ground is that conditions prevailing in the family within three years period should be taken into account for consideration for giving appointment on compassionate ground, which is reiterated by the Division Bench of this Court in W.A. (MD) No.510 of 2010, dated 05.02.2011. It is to be noted that while disposing of the appeal in W.A. (MD) No.510 of 2010, the Division Bench of this Court observed as under:

"2.The learned counsel for the appellant submitted that the appellant has got a certificate from the Revenue Department to the effect that her sister after her marriage is living separately and the certificate was obtained on 31.07.1998 and based on the said certificate, the petitioner applied for compassionate appointment on 19.8.1998 and the same being within three years from the date of death of

his father, the claim for compassionate appointment shall be considered on the said fact. But the same has not been considered by the respondents as well as in the order passed by the learned Single Judge."

23. When the judgment of the Division Bench of this Court is to consider the claim of the petitioner on the aspect of submission of application for compassionate appointment within three years, it is the bounden duty of the 1st respondent to consider the claim of the petitioner, as no appeal has been preferred against the judgment of the Division Bench of this Court by the official respondents and that the said judgment attained finality.

24. Nothing has been produced by the respondents to show that the family of the petitioner owning movable and immovable properties on their own and the income, if any, is sufficient to sustain the family. To decide the indigent circumstances, the amount of pension cannot be taken into consideration on account of G.O.Ms.No.155, dated 16.7.1993. Only the income which are derived from movable and immovable properties can alone be taken into account. Admittedly, the petitioner's family does not derive any income from movable and/or immovable properties.

25. It is settled that in all claims of appointments on compassionate ground, 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 appointments should, therefore, be provided immediately to redeem the family in distress.

26. The 1st respondent rejected the claim of the petitioner mainly on the grounds that his sister was in employment as a teacher and she got married on 14.6.1998 and thereafter got separated and on the date of death of the deceased one of the family members was in employment and the family was receiving pension and therefore, the family of the deceased Government servant cannot be said to be in an indigent circumstances. The aforesaid grounds of the 1st respondent in rejecting the claim of the petitioner cannot be sustained in view of the foregoing discussions. Therefore, in the facts and circumstances of the case, the impugned order is liable to be set aside.

27. In the result, the writ petition is allowed and the impugned order of the 1st respondent in Na.Ka.No.115825/J3/2010 dated 29.04.2011 is set aside. The respondents are directed to

appoint the petitioner on compassionate ground in a suitable post in the Government service within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

vs

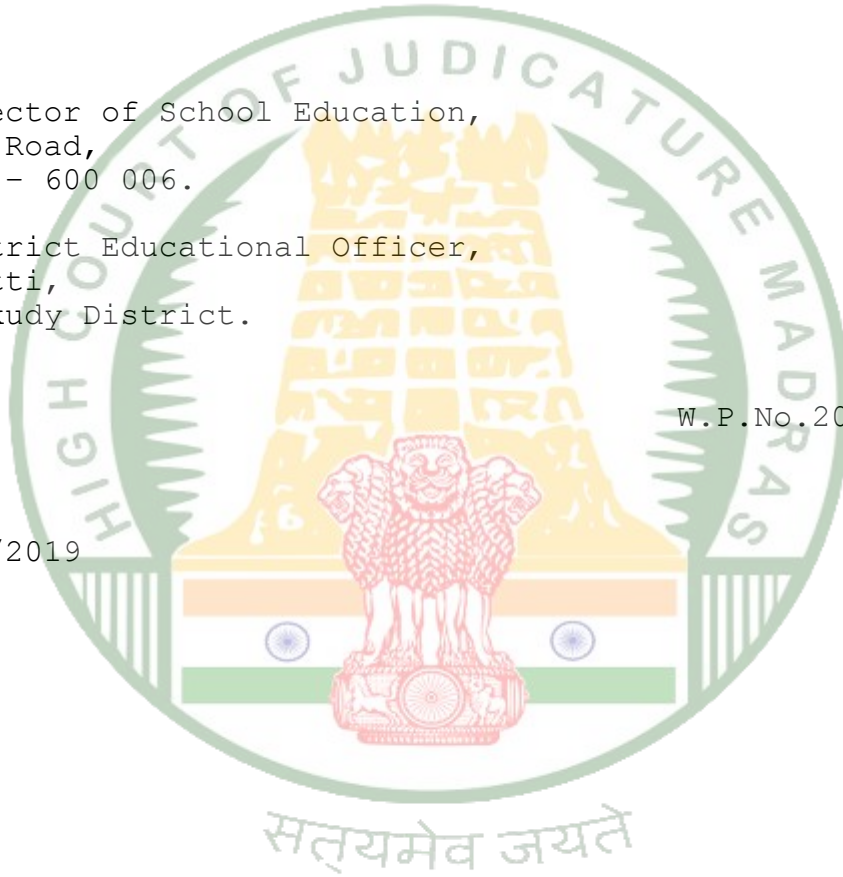
To

- 1.The Director of School Education,
College Road,
Chennai - 600 006.
- 2.The District Educational Officer,
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Thoothukudy District.

W.P.No.20700 of 2012

KJ(CO)

rrs 02/01/2019



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