

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.17703 of 2017

A.Nagarajan

... Petitioner

.Vs.

1. The Secretary to Government,
Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
2. The Joint Director,
Directorate of School Education,
College Road, Chennai 600 006.
3. The District Elementary Educational Officer,
District Elementary Education Office,
Villupuram District.
4. The Assistant Elementary Education Officer,
Assistant Elementary Education Office,
Mugaiyur at Manampoondi 605 759.
Villupuram District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order Mu.Mo.No.1145/Ah1/2017 dated 08.05.2017 passed by the third respondent and quash the same and consequently direct the respondents to give appointment to the petitioner in a suitable post on the ground of compassionate immediately without any further delay.

For Petitioner : Mr.K.S.Ganesh Babu

For Respondents : Mr.P.Sanjay Gandhi

Additional Government Pleader

O R D E R

The order of rejection issued by the third respondent in the proceedings dated 08.05.2017 rejecting the claim of the writ petitioner for compassionate appointment is under challenge in this writ petition.

2.The writ petitioner's father late K.Arunachalam died on 21.03.1999 while in service. He was working as Head master in the Education Department. The legal heirs left behind are 1.Tmt.A.Mahalakshmi(Wife), 2.A.Nagarajan (Elder son/ Writ petitioner), 3.Valli(daughter), 4. Lalitha (daughter) and 5.A.Durai(son).

3.The learned counsel appearing for the writ petitioner contented that an application seeking compassionate appointment was submitted on 03.01.2002 and the respondents have not initiated any action to provide employment to the writ petitioner.

4.The learned counsel appearing for the writ petitioner further submitted that the writ petitioner is regularly approaching the respondents for compassionate appointment and the respondents are not providing the same by stating one reason or the other.

5.Finally, the writ petitioner filed W.P.No.2648/2017 and this Court passed an order on 03.02.2017 directing the third respondent to consider the representation dated 29.12.2016. Pursuant to the direction issued by this Court, now, the third respondent passed the impugned order dated 08.05.2017.

6.The learned counsel appearing for the writ petitioner contended that the petitioner has submitted a proof showing that the application seeking compassionate appointment was submitted within a period of three years. Therefore, there is no infirmity in submitting the application seeking compassionate appointment and hence, the claim should be considered in accordance with the Government Orders.

7. Now, this Court is inclined to examine the nature of the indigent circumstances suffered by the family of the deceased Government employee.

8.On perusal of the affidavit and the order impugned in this writ petition, it is an admitted fact that the two daughters of late deceased employee got married prior to the death of the employee and they are living separately. That apart, the 5th son and the brother of the writ petitioner, A.Durai, is also employed in a private company and got married and is living separately. Further, the writ petitioner got married 20 years back and is living separately. This fact can be understood since the age of the writ petitioner as on today is 44 years, as per the affidavit filed in support of the writ petition.

9.Under these circumstances, the Court is unable to

appreciate the contention that the family is still living in indigent circumstances. The very object of the scheme of compassionate appointment is to mitigate the hardship suffered by the family of an employee who died while in service.

10.The claim of compassionate appointment cannot be considered as a regular recruitment process. It is a concession granted in favour of the dependants of a deceased employee.

11.The scheme of compassionate appointment is well considered by a Division Bench of this Court order dated 18.01.2017 in W.P.No.1207 of 2015, T.Jothimalar vs. Principal District Judge, Cuddalore and others in which myself SMSJ is also a Member, which reads as follows:

"4.A Government Servant is expected to give his full time attention and energy and render his very best of attention for securing faithful implementation of various schemes and welfare measures brought in the place by the State government, he is termed as a round the clock servant of the state and he should devote and dedicate himself for providing good quality services to the citizens. Should, unfortunately, any such employee die in harness, his family members cannot be left behind in distressful conditions, unattended to and uncared for. With the sudden departure of a breadwinner, we should be alive to the fact that most of the Indian families lose the very source of their sustenance. It is not at all difficult for us to imagine that in spite of rapid strides of progress, the country has been making in all sectors, still there are several lakhs of families having a single breadwinner and on an average 4 or 5 hungry persons depend on him for their sustenance and survival. In such a senario, if that breadwinner vanishes suddenly, it is not at all difficult for us to visualise the harrowing plight to which the family would be reduced to overnight. The savings made by the public servant would be hardly enough to see them through the next six months, at best. During the best days of a man, he might have contributed meaningfully, given the fact that whatever marginally that would make a difference, to the state service and consequently the State Government would have earned the goodwill from its grateful citizens for the quality of services rendered to them, by those servants including the deceased employee.

5. Apart from the civil servant enjoying the status as such upon his death, if his family members who are surviving are not to be taken care of by the state, the prospects are such that a negative image can be spread in the society that the state never bothers for the well being of the dependents of the Government Servants. It is to avoid any such negative image gaining ground, the State Government as a socio welfare measure, has put in place a mechanism for providing employment to one of the eligible dependents of the family of the deceased Government Servant. Several dependents of the family of the deceased Government Servant. Several meaningful conditions are attached to be compiled with before hand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be compiled with before hand for securing the benefit of the said scheme. The reason being that opportunities of public employment have to be thrown open to competition for one and all. All members who are eligible to be so recruited should be permitted to compete and the best amongst them found suitable can alone get employment. Therefore, an exception is sought to be carved out from this constitutionally assured mechanism of filling up public employment while providing for making appointments on compassionate grounds. Possibly, conditions can be stipulated such as that at the time of the death, the left over service of the deceased employee before he attains the age of superannuation should not be less than a reasonable period, say three years or at best five years. Similarly, a stipulation that appointment on compassionate grounds should be claimed as quickly as possible after the death of the civil servant, a duration in this regard can be prescribed not to exceed by a reasonable length of time of say three years or at best five years. If the surviving members of the civil servant who died can get along and carry on their show for considerable length of time after the departure of the breadwinner, by far, in a reasonable manner, interference can be drawn from that the family of the deceased civil servant is able to find for itself, notwithstanding the loss of the breadwinner. The period of endurance of such a family holds out

an assurance that the family has got over the trauma caused by the departure of the breadwinner and it has the necessary social resources to carry on with the show in the absence as well.

6. In these set of circumstances, the state Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

7. When we keep these factors in mind and also in view of the fact that making appointments on compassionate grounds is not one of the identified/marked sources of recruitment to civil service rather it is an exception to the normal constitutional norm of allowing all people to contest and compete-appointments on compassionate grounds cannot be made after long years have gone by, from the date of the death of the civil servant".

12. In view of the elaborate discussions made in the Judgment of the Division Bench and the reasons stated in the impugned order that the family of the writ petitioner is well placed and two daughters got married prior to the death of the deceased Government employee and the 5th son is also married and employed in a private concern and the writ petitioner also got married 20 years ago and is living separately, this court finds no infirmity in the impugned order.

13. Accordingly, this Court is not inclined to consider the grounds raised in this writ petition and the writ petition stands dismissed. No order as to costs.

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Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

smn/kas

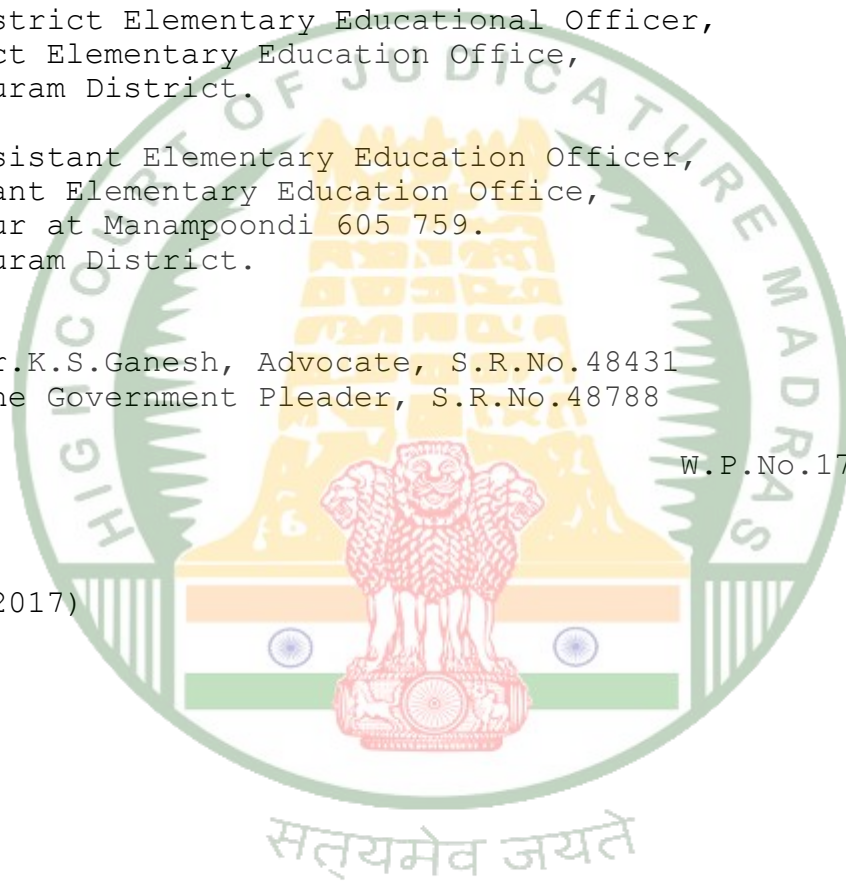
To.

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+1cc to Mr.K.S.Ganesh, Advocate, S.R.No.48431
+1cc to the Government Pleader, S.R.No.48788

W.P.No.17703 of 2017

SS(CO)
CA(28/07/2017)



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