

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.6395 of 2011

N.Gopalakrishnan

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Petitioner

Vs

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

2.The District Educational Officer,
Namakkal District.

3.The District Elementary Educational
Officer,
Namakkal District.

4.The District Elementary Educational
Officer,
Rasipuram,
Namakkal District.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to Pro.Na.Ka.No.857/A1/09 dated 4.11.2009 of the second respondent and consequent proceeding No.O.Mu.No.5597.A1/2010 dated 08.12.2010 of the third respondent, rejecting the petitioner claim for appointment of compassionate grounds, to quash the same and to issue consequential directions to the same respondents to appoint the petitioner in any suitable post commensurate with educational qualifications on compassionate grounds.

For Petitioner :Mr.Suresh for
M/s.V.Thirupathi

For Respondents:Mrs.M.E.Raniselvam
Addl. Govt. Pleader

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, to call for the records relating to

Pro.Na.Ka.No.857/A1/09 dated 4.11.2009 of the second respondent and consequent proceeding No.O.Mu.No.5598.A1/2010 dated 08.12.2010 of the third respondent, rejecting the petitioner claim for appointment of compassionate grounds, to quash the same and to issue consequential directions to the same respondents to appoint the petitioner in any suitable post commensurate with educational qualifications on compassionate grounds.

2.Learned counsel for the petitioner would submit that earlier the petitioner has approached this Court by way of a writ petition in W.P.No.5440 of 2008 and this Court by order dated 10.11.2008, allowed the writ petition and set aside the order of rejection, based on the orders passed by the Hon'ble Division Bench of this Court, in paragraphs 3 and 4 read as follows:

3.A similar issue was considered by the Division Bench of this Court in the decision reported in 2008 (3) LLN page 243 (STATE OF T.N. v. R.NAGAMANI) wherein the Division Bench in paragraphs 3 and 4 was held as follows:

3. We find that in the instant case, a choice is given to make an application both to the seniormost eligible person or a qualified person. The word 'or' has to be treated as disjunctive in the facts and circumstances of this case. We are adopting this interpretation in keeping in view the fact that the scheme of compassionate appointment is one made for social benefit to the poor and indigent families. So, while considering the same, whenever it is possible, a construction should be adopted which preserves the benefit and any construction which frustrates the benefit must be eschewed. In the facts of this case, we are of the view that the word "or" must be construed disjunctively and we are of the opinion that the choice to apply for compassionate appointment is given either to the seniormost eligible person or any qualified person in the family of the deceased. It cannot be disputed that the first respondent is a qualified person in the family since the appointment which is sought is to the post of an assistant teacher.

4. Considering all these facts, we do not find there is any reason for us to interfere with the order passed by the learned Single Judge. We, therefore, reiterate the direction given by the learned Judge and direct that the appellants must offer appointments to the first respondent to a suitable post as per the Rules, Regulations and administrative instructions of the dpartment and

since this appointment has already been delayed, we direct that such appointment be offered within a period of four weeks from date."

From a perusal of the above Division Bench order, it is evident the scheme of compassionate appointment nowhere states that only the widow or eldest member can apply for compassionate appointment and any one of the family members is eligible to apply under the scheme and the same is bound to be considered by the department. In the light of the above Division Bench judgment the impugned order passed by the second respondent is unsustainable and the same is set aside. The matter is remitted to the first respondent and first respondent is directed to consider the claim of the petitioner without reference to the objection stated in the impugned order of the second respondent and pass revised order within a period of four weeks from the date of receipt of a copy of this order.

3. In spite of passing revised order by giving appointment to the petitioner, the third respondent again passed orders by rejecting the petitioner's request on 04.11.2009, by rejecting the petitioner's request stating that at the time of his father's death dated 04.10.1992, he has completed the age of 33 years three months 17 days. Again the respondent has passed the present impugned order dated 08.12.2010, by rejecting the petitioner's request on the same ground that the petitioner has completed the age of 33 years 3 months and 17 days. As per G.O.No.1579 Labour and Employment Department dated 21.07.1981, the appointment under compassionate ground should be within 30 years.

4. Challenging the said impugned order, the present writ petition has been filed by the petitioner stating that the petitioner applied within the time limit and this Court by order dated 10.11.2008, considered the petitioner's case, in a proper manner and also set aside the earlier impugned order dated 29.08.2007, passed by the third respondent and directed the respondent to pass revised order within four weeks. Instead of passing order by appointing the petitioner, the third respondent is simply stating that the petitioner has crossed the age of 30 years as per the above said G.O.

5. It is seen that earlier the impugned order dated 29.08.2007 passed by the third respondent stating that when an eligible elderly person is available, younger person is not entitled for compassionate appointments and therefore, the

petitioner's request was rejected and subsequently, another impugned order has been passed on 08.12.2010, by the respondent taking a different ground that he crossed the age limit. The third respondent has not properly applied his mind while passing the impugned order. Even though the respondents are entitled to pass any order, they should make it clear at the first instance and they cannot be give reasons in piece meal which act is totally against the principles of natural justice. Now therefore, the impugned order is hereby set aside. The respondents says that now the petitioner crossed 58 years which is the age of retirement of the employee in service. But the petitioner claiming that if the petitioner is appointed in Group IV service, he is entitled to get the employment upto 60 years. Therefore, he prays for allowing the writ petition.

6.In the result,

a] The writ petition is allowed by setting aside the impugned order dated 08.12.2010 of the third respondent;

b] The respondents are hereby directed to appoint the petitioner in the Group IV post if he is eligible.

c] the respondents are directed to complete the proceedings within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1.The Director of Elementary Officer,
Nungambakkam,
Chennai-600 006.

2.The District Educatinal Officer,
Namakkal District.

3.The District Elementary Educational
Officer,
Namakkal District.

4.The District Elementary Educational
Officer,
Rasipuram,
Namakkal District.

+ 1 cc to M/s.V.Thirupathi, Advocate,SR.64183

+ 1 cc to The Govt.Pleader, SR.64965

W.P.No.6395 of 2011

KS (CO)
NR 13/10/2017



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