

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.11745 of 2012

A.Jeevanandam

.. Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Secretariat,
Chennai – 600 009.

2.The Director of Elementary Education,
Nungambakkam,
Chennai – 600 006.

3.The District Elementary Educational Officer,
Erode,
Erode District.

4.The District Educational Officer,
Gobichettipalayam,
Erode District.

5.The Assistant Elementary Educational Officer,
Sathiyamangalam, Erode District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the 3rd and 4th respondents to appoint the petitioner on compassionate grounds in any

post commensurate with his educational qualification consequent on the death of his father, Thiru.S.R.Arumugam, on 30.03.1995 while serving as Headmaster in Panchayat Union Elementary School, Bennari, Sathyamangalam, Union, Erode District.

For Petitioner : Mr.V.Thirupathi

For Respondents : Mrs.M.E.Rani Selvam
Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a Writ of Mandamus, directing the 3rd and 4th respondents to appoint the petitioner on compassionate grounds in any post commensurate with his educational qualification consequent on the death of his father, Thiru.S.R.Arumugam, on 30.03.1995 while serving as Headmaster in Panchayat Union Elementary School, Bennari, Sathyamangalam, Union, Erode District.

2.The case of the petitioner is that his father deceased S.R.Arumugam was served as Headmaster in the Panchayat Union Elementary School, Bennari, Sathyamangalam Union, Erode District. While he was in service, on 30.03.1995 he was died due to his illness and leaving behind him (1)Smt.Sarojini (wife); (2)Mr.Thiyagarajan

(son); and (3) Mr. Jeevanandam (son), who is the petitioner herein, as his dependants, due to untimely death of the sole earning member of the family, the deceased's family members had to live in indigent circumstances with no other members of the family employed anywhere.

3. After the death of the petitioner's father, the retirement benefits were received by his mother Smt. Sarojini and the said service retirement benefits were settled to the persons, where the petitioner and his mother were borrowed hand loan from the 3rd parties to meet the petitioner's father expenses during his last day of his life. Though the meagre family pension received by his mother, the said amount was not sufficient to maintain the family, since there was no immovable properties owned by the petitioner's family.

4. After the death of the petitioner's father on 30.03.1995, this petitioner has made an application on 25.03.1998 i.e. well within three years from the date of death of his father to the respondents with a request to provide an appointment under the compassionate ground, since the petitioner was the eligible dependant to be given such appointment. The petitioner having qualification of B.Com.

Degree Examination, Typewriting (English) Lower Grade Examination and Certificate Course in Personal Computer Applications were obtained by him. Though the said application was sent to the Assistant Elementary Educational Officer, Sathyamangalam, who is the 5th respondent herein, was forwarded to the District Elementary Educational Officer, Erode, who in turn forwarded the same to the District Educational Officer, Gopichettipalayam, in his proceedings in Na.Ka.No.3349/A1/98 dated 23.10.1998, who is the 4th respondent herein for necessary action and for appointment to the petitioner.

5. It is the further case of the petitioner is that at the time of submitting the application on 25.03.1998, the petitioner has submitted all the prescribed certificates viz.,

- (i) Death Certificate of his father;
- (ii) Legal Heirship certificate;
- (iii) Income certificate;
- (iv) Certificate of non-employment of others in the family;
- (v) No objection certificate from the petitioner's mother and brother; and
- (vi) Petitioner's educational qualification.

6.Though the petitioner was sent the said application dated 25.03.1998, but there was no action on the side of the respondents. Therefore, he made repeated representations to the District Elementary Educational Officer, Erode has returned the proposals to the Assistant Elementary Educational Officer, Sathyamangalam on 08.10.2001, calling for certain additional particulars and the said particulars were furnished by the petitioner to the Assistant Elementary Educational Officer, Sathyamangalam, in time, but even then, there was no action.

7.The petitioner further submits that in the meantime, there was a ban on compassionate grounds appointment from November 2001 till February 2006. Therefore, the petitioner came to know that the respondents have not taken any action on the petitioner's application under the compassionate ground appointment. Thereafter, after lifting the ban by the Government, the petitioner again submitted an application to the District Elementary Educational Officer, Erode, in turn has informed the petitioner in his proceedings in Na.Ka.No.638/2007/A1 dated 13.02.2007 informed the petitioner that the proposals were sent to the District Educational Officer, Gopichettipalayam in respect of the appointment of the petitioner

under the compassionate ground.

8. After the proposal sent by the District Elementary Educational Officer, Erode, to the District Educational Officer, Gopichettipalayam, this petitioner has sent several representations and in person has approached the District Educational Officer, Gopichettipalayam in the year 2007 and 2008, but, he was unable to get any favourable response except rough replies that the petitioner's application would be re-submitted to the higher authorities. Therefore, the petitioner again sent the representations dated 15.03.2009 and 12.12.2009 to the District Elementary Educational Officer, Erode and further representations dated 18.06.2010 and 17.01.2011 to the Director of Elementary Education, Chennai.

9. It is further case of the petitioner that though he made repeated representations to the respondents, but the authorities have not evoked any response on his representations, therefore, finally on 15.11.2011, this petitioner has sent a representation to the Government bringing to their notice, about the above facts and requesting to pass suitable orders directing the respondents to appoint the petitioner on compassionate ground in any suitable post at the

earliest by granting relaxation of rules, if necessary. But even then, there was no reply received from the 1st respondent / Secretary to Government, School Education Department, Chennai. Therefore, the petitioner left with no other alternative, he approached this Court and filing this writ petition seeking a direction to the respondents 3 and 4 to appoint the petitioner on compassionate grounds in any post commensurate with his educational qualification consequent on the death of his father S.R.Arumugam on 30.03.1995 while serving as Headmaster in Panchayat Union Elementary School, Bennari, Sathyamangalam Union, Erode District.

10.A counter affidavit has been filed on behalf of the respondents by the District Elementary Educational Officer, Erode District, the 3rd respondent herein.

11.The respondents were denied each and every allegations set out in the affidavit filed by the petitioner and stated that the writ petition itself is not maintainable either in law and on facts.

12.It is the case of the respondents that the petitioner's father S.R.Arumugam, while serving as Headmaster in Panchayat

Union Elementary School, Bennari, Sathyamangalam Union, Erode District and died on 30.03.1995. After the death of the petitioner's father S.R.Arumugam, the petitioner has submitted his representation on 25.03.1998 to the 3rd respondent with a request to give an appointment in Government service under the compassionate ground. Though the particulars furnished by the petitioner were not sufficient for examining his case in the light of the orders in force governing the appointment on compassionate ground, the petitioner was requested by the 3rd respondent proceedings in Na.Ka.No.3369/A1/1998 dated 23.10.1998 to furnish certain additional particulars and returned the proposal to the petitioner.

13.It is also the case of the respondents that when the petitioner has not furnished the additional particulars sought for by the 3rd respondent, he has reported that as his mother was not well and he was not submitting the required particulars, but the petitioner has slept over the matter for the years without any action, the petitioner has keep quite and if the petitioner been really interested in securing employment on compassionate ground, he could have pursued the matter consistently. But he has failed to do so.

14.It is admitted fact that the proposal sent to the respondents 3 and 4, the District Educational Officer, Gopichettipalayam in his proceedings Na.Ka.No.638/2007/A1 dated 13.02.2007, but after a long delay on 16.07.2012, the petitioner again sending representations belatedly to the respondents.

15.Pursuant to the above representation made by the petitioner on 16.07.2012, the 5th respondent vide in his proceedings in Na.Ka.No.714/A1/2012 dated 18.09.2012 with a request to re-submit the proposal in the format to the 5th respondent office with the particulars that the petitioner should sent a representation already, with the official seal for having received in office, alleged to have been made within three years from the date of death of the Government Servant.

16.The respondents also states that the 3rd respondent also sought for the reply that when the other son of the deceased Teacher despite married and unemployed with sufficient qualification why he has not appoint in the compassionate ground. Therefore, it is made clear that the petitioner's family is not an indigent circumstances.

17.The respondents further states that when the 5th respondent by order dated 18.09.2012 sought for the above clarification, but without reply in the order dated 18.09.2012, the petitioner has approached this Court. Therefore, the writ petition itself is not maintainable and the respondents are prayed for dismissal of the writ petition.

18.I heard Mr.V.Thirupathi, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents and perused the entire records.

19.It is admitted fact by both the parties that the petitioner's deceased father S.R.Arumugam was died on 30.03.1995 while he was in service and served as Headmaster in Panchayat Union Elementary School, Bennari, Sathyamangalam, Union, Erode District.

20.It is also not disputed that the petitioner was submitted his representation within a period of three years from the date of death of his father on 25.03.1998. From 1998 to till 2012, the said representations and the proposals were returned to the petitioner for one or other reasons.

21.It is not the case of the respondents that the petitioner is not eligible for the appointment under the compassionate ground, but it is the only denial by the respondents by stating that when the other son of the deceased one Mr.Thiyagarajan was alive, why he has not made an application for appointment under the compassionate ground.

22.The reasons given by the respondents is totally against the law and natural justice. The respondents themselves were aware the 1st son Mr.Thiyagarajan was already married and settled, but this petitioner, who is the one another son and the deceased wife Smt.Sarojini were alone suffering from running the family. When no Government Order says that while the 1st son was alive, the other son is not eligible for the appointment of the compassionate ground. Thus being the case, why the respondents have make the query that while the 1st son of the deceased was alive, why the petitioner has made representations to the compassionate ground.

23.The action of the respondents is totally against the order passed by this Court and the Hon'ble Apex Court in various cases that when a person belongs to the deceased family, who is employed in the

office of the respondents. The respondents authorities should appoint one of the member of the family under the compassionate ground and they should not throw the family from pillar to post by giving reason one or other reason, particularly while the 1st son is alive and the 2nd son sent the representations for appointment under the compassionate ground.

24. Time and again, this Court and the Hon'ble Apex Court has categorically held that when the deceased family was in indigent circumstances and the person, who applied for the appointment under the compassionate ground well within a period of three years, the respondents have not to say anything except to provide the appointment to the persons.

25. But in this case, this Court totally unsatisfied with the inaction of the respondents and throw the petitioner from pillar to post from 1998 to till date i.e., nearly 20 years. Though it is not the case of the respondents that this petitioner is not eligible for appointment under the compassionate ground either in reply or counter affidavit. Therefore, this petitioner has make out the case before this Court and this Court is inclined to allow the writ petition by giving direction to

provide any employment to the petitioner without any further delay, since he was already suffered from the past 20 years.

26.In the result:

(a) this writ petition is allowed;

(b) the respondents are directed to consider the petitioner's representations dated 28.02.2000 and 10.04.2012 and to appoint the petitioner in any post based on his Educational Qualification pursuant to the death of the petitioner's father Mr.S.R.Arumugam, on 30.03.1995 while serving as the Headmaster in Panchayat Union Elementary School, Bennari, Sathyamangalam Union, Erode District;

(c) the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

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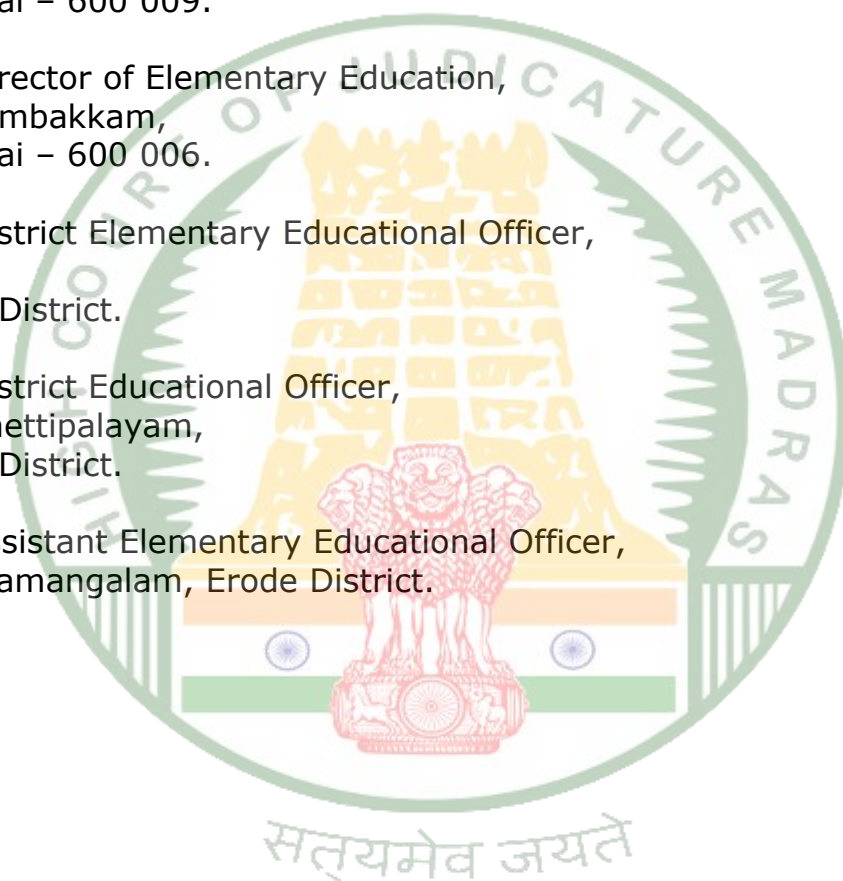
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Note:Issue order copy on 30.05.2018
vs

Index : Yes
Internet : Yes
Speaking order

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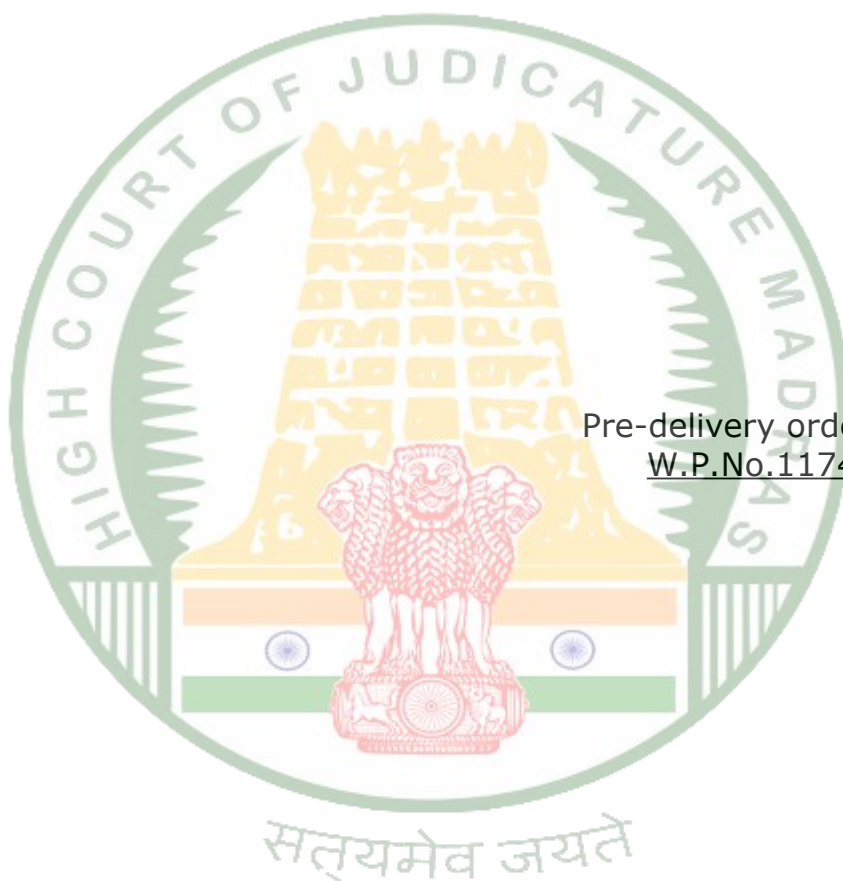
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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
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