

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-08-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.444 of 2015

Bhaskar

..

Petitioner

vs.

1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-6.

3.The District Elementary Educational Officer,
Villupuram.

4.The District Educational Officer,
Tindivanam.

..

Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the impugned order passed by him in Na.Ka.No.67655/J1/2013 dated 25.11.2014 and quash the same and direct the respondents to appoint the petitioner on compassionate ground and grant him all consequential service and monetary benefits.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader.

O R D E R

The order of rejection, rejecting the claim of the writ petitioner for compassionate appointment, is under challenge in this writ petition.

2. The father of the writ petitioner was working as Headmaster in Panchayat Union Elementary School in M.Pudupakkam in Markanam Panchayat Union, Villupuram District and he died on 31.10.1998 while he was in service and soon after the death of the deceased Government employee, the wife of the deceased submitted a representation to the respondents, seeking appointment on compassionate grounds and the same was not considered. Subsequently, an application in the prescribed format was sent on 23.5.2001, with a request to provide appointment to the writ petitioner on compassionate grounds. The same was rejected and the writ petitioner filed W.P. No.20758 of 2013 and this Court passed an order on 8.9.2014, directing the respondents to reconsider the issue on merits and the rejection order was set aside.

3. Pursuant to the orders of this Court, the impugned order dated 25.11.2014 was issued by the second respondent. The impugned order states that the deceased employee passed away on 31.10.1998 and the application was submitted on 23.5.2001. Further, the deceased

employee left five legal heirs and the wife of the deceased employee is receiving the family pension. The second legal heir daughter E. Shanthi got married and living separately along with her husband. The other legal heirs also got married and they are employed in Private Sector and living separately. Thus, the question of considering the case of the writ petitioner for compassionate appointment does not arise at all.

4. The respondents have ascertained the situation of the family and came to the conclusion that the family is not in indigent circumstances and therefore, the benefit of compassionate appointment Scheme cannot be extended to the family of the writ petitioner.

5. Compassionate appointment is a Scheme and the Scheme is provided to mitigate the indigent circumstances arising on account of sudden demise of a Government employee. Compassionate appointment is an exception and can never be construed as a regular recruitment process. Indigent circumstances of the family of a deceased employee is to be considered, while extending the benefit of compassionate appointment scheme. Equal opportunity of public employment is a constitutional mandate and any scheme by way of exception is to be granted by ascertaining the genuinity and strictly in accordance with the terms and conditions of the Scheme.

6. The opportunity of public employment cannot be denied by way of Schemes by providing appointment under the Scheme. Equal opportunity of employment is to be provided to all citizens and compassionate appointment, being a Scheme, has to be implemented by ascertaining the genuinity and indigency of the family of the deceased employee.

7. In this regard, it is useful to cite the following judgment of this Court in the case of **T.Jothimalar vs. Principal District Judge, Cuddalore District, Cuddalore {WP No.1207 of 2015 decided on 18.1.2017}**, the relevant paragraphs-3 to 7 are extracted hereunder:-

"3. India being a socialistic republic, keeps evolving various schemes to further the objectives enshrined in Part IV of our Constitution. It is relevant to take note of the fact that State is required to endeavour for promoting the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political should prevail. The State is also required to make effective provisions for securing the right to work and to public assistance in case of unemployment, old age, sickness, disablement and any other causes of undeserved want. As a part of promotion of the welfare of those recruited by the State to various services established by it, the necessity to provide for employment

opportunities to the members of the family of the deceased Government servants has arisen.

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 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 inspite 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 scenario, 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 States '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 meaningful conditions are attached to be complied 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 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 feed 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 his 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."

8. In view of the principles laid down in the above judgment, this Court is of the firm opinion that after this length of time, the petitioner cannot be provided with any appointment on compassionate ground. Accordingly, the writ petition deserves no further consideration and it stands dismissed. However, there shall be no order as to costs.

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Speaking Order/Non-Speaking Order.

Index : Yes/No.

Internet : Yes/No.

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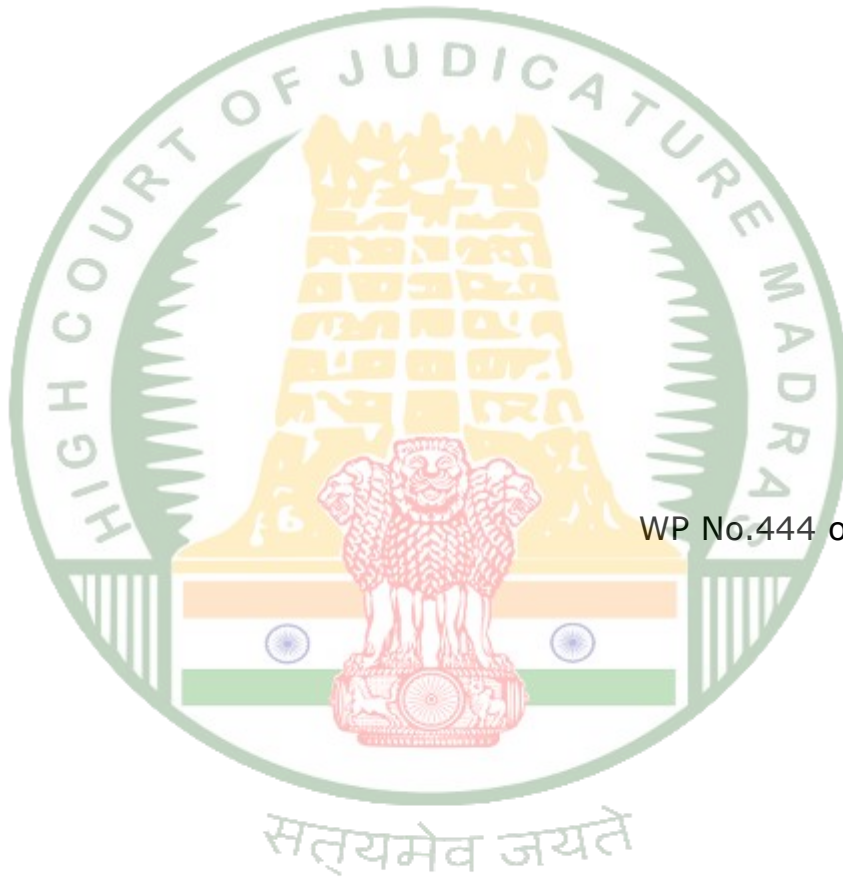
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S.M.SUBRAMANIAM, J.

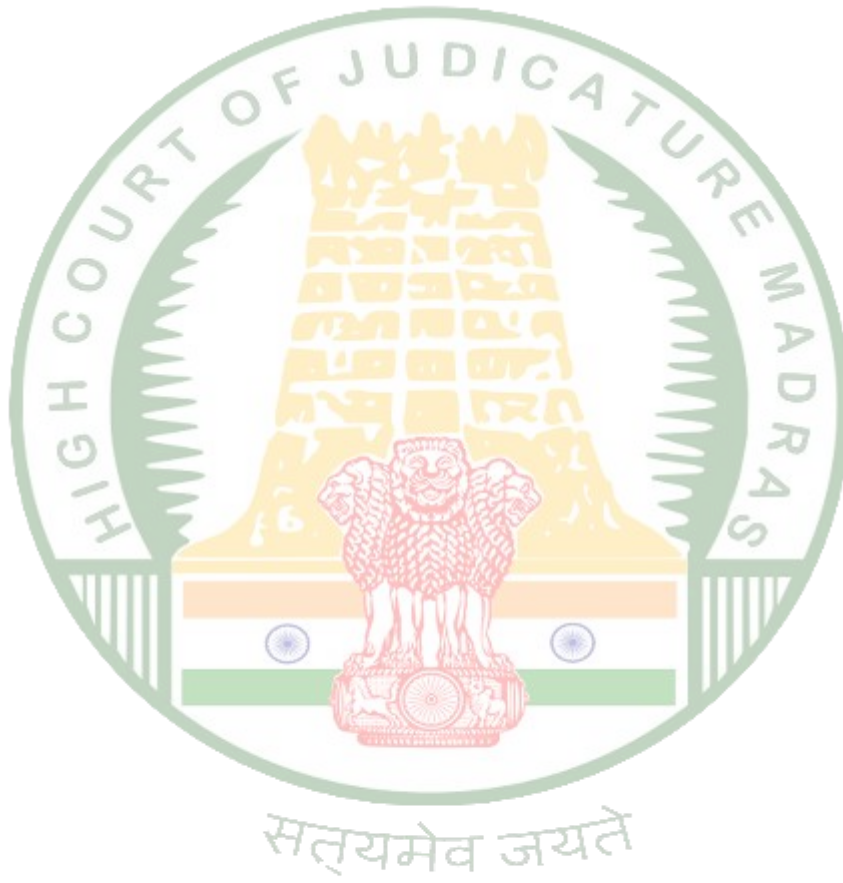
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