

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM

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

WRIT PETITION No.32821 of 2012

R.Kannan
S/o.Late T.Ramajayam,
No.51-A, Jarugu Village,
Maaniyathahalli Post,
Nallampalli Via,
Dharmapuri Taluk and District. ... Petitioner

/versus/

- 1.The Director of Elementary Education,
College Road,
Chennai-600 006.
2. The Chief Educational Officer,
Dharmapuri District,
Dharmapuri.
3. The District Elementary Educational Officer,
Dharmapuri District,
Dharmapuri.
4. The Assistant Elementary Educational Officer,
Nallampalli Panchayat Union,
Dharmapuri Taluk and District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to appoint the petitioner on compassionate grounds in their services for a post of Junior Assistant or any other suitable post based on his application dated 27.07.2012, to the 2nd respondent.

For Petitioner :Mr.C.Prabakaran

For Respondents :Mr.A.Raja Perumal
Additional Government Pleader for R1-R4

O R D E R

The petitioner has come forward with this writ petition seeking for compassionate appointment.

2. According to the petitioner, his father was working as Head Master at Panchayat Union Elementary School, Podarankottai, Nallampalli Panchayat Union, Dharmapuri District. While so, on 06.03.1994, he passed away leaving behind the petitioner, his mother and three sisters. The family struggled hard after the death of the head of the family, and the mother, with the great difficulty, run the family and brought up the kids.

3. While so, on 11.06.2012, one of the sister of the petitioner sent a letter to the District Collector, Dharmapuri District, seeking to grant the relief of compassionate appointment to the petitioner. Based on the said representation, the second respondent has sent a communication to the District Collector, Dharmapuri District, and the petitioner's family, informing that necessary action would be initiated in due course. Thereafter, the petitioner submitted a detailed application enclosing necessary documents. Based on the said representation, the second respondent sent a letter to the fourth respondent seeking for opinion from the competent authorities, vide his proceedings in Na.Ka.No.4521/A5/2012, dated 15.06.2012.

4. Though, the second respondent sought for an opinion from the fourth respondent as well as other competent authorities, the fourth respondent has not forwarded the same. According to the petitioner, the Tahsildar conducted a detailed enquiry and issued certificate for grant of compassionate appointment. However, the representation of the petitioner was negated by the respondents. Therefore, the petitioner has knocked the doors of this Court to issue a Writ of Mandamus directing the respondents to consider the petitioner for appointment.

5. The third respondent/District Elementary Educational Officer, Dharmapuri District has filed a detailed counter affidavit contending that the father of the petitioner died about two decades ago and at the time of the death of his father, the petitioner was only nine months old baby. As per the existing Government Order in G.O.Ms.No.120, Labour and Employment Department, dated 20.06.1999, for seeking compassionate appointment, a family member should apply within three years from the death of the breadwinner. In this case, the petitioner has made an application for compassionate appointment, twenty years after the death of his father. Therefore, the third respondent prays that the writ petition may be dismissed, since the petitioner has not approached the respondent within the stipulated period of three years.

6. The learned counsel for the petitioner submitted that the mother of the petitioner was an uneducated lady. After the death of her husband, forced with no other option, she did odd jobs and brought up the children and gave them education. The petitioner's mother was unaware of the three years stipulated

period and she hoped that her son would get compassionate appointment after completing education. The learned counsel also pointed out that the sisters of the petitioner are willing to give consent letter to the authorities to consider the petitioner for compassionate appointment. The learned counsel also submitted that the sisters of the petitioner are unmarried and due for marriage. Therefore, the learned counsel submitted that the respondents may be directed to grant compassionate appointment to the petitioner forthwith.

7. Per contra, the learned Government Advocate submitted that though this is a fit case for granting compassionate appointment, the family of the deceased has approached the respondent at a wrong time. As per the Government Order in G.O.Ms.No.120, Labour and Employment Department, dated 20.06.1999, an application for appointment on compassionate grounds should be made within three years from the date of death of Government servant. The maximum age limit for such appointment was raised to 50 years in the case of widows of the deceased Government servants. This order took effect from the date of the issue of the order. Thereafter, it was clarified by the Labour and Employment Department by letter dated 11.10.1995 that three years limitation for making application is applied only in the case of the death of the government servant who died after 26.06.1995 and there could be no limitation, in the case of death of the Government servant, who died prior to 26.06.1995. The relevant paragraphs are extracted hereunder:

'In the Government Order 1st cited, the following modifications were issued to the existing scheme of appointments under compassionate grounds to the dependants of the deceased Government servants, with effect from the date of issue of order:

(i) The applications for appointment on compassionate grounds should be made within three years of the death of Government Servants.

(ii) The maximum age limit for such appointment be raised to 50 years in the case of widows of the deceased Government Servants.'

8. In this case, the sisters of the petitioner have sent a letter to the District Collector in 2012. The petitioner has made an application on 27.07.2012 nearly after 18 years, after the death of his father.

9. The learned Additional Government Pleader during arguments drew the attention of this Court to the fact that the petitioner was only 9 months old child when his father died. The fact that the family survived for 18 years after the death of the father would prove that they have means to take care of themselves. According to the Additional Government Pleader, compassionate appointment is given to help the family to tide over the sudden loss of the breadwinner and the subsequent

economic crisis. Since the petitioner has approached the authorities after a long period of 18 years, this is not a fit case for granting compassionate appointment.

10. I have heard Mr.C.Prabakaran, learned counsel appearing for the petitioner and Mr.A.Raja Perumal, Additional Government Pleader for the respondents/State.

11. It is the admitted case of the respondents that father of the petitioner was working as Head Master at Panchayat Union Elementary School, Podarankottai, Nallampalli Panchayat Union, Dharmapuri District and he died in harness on 06.03.1994. The respondents are mainly attacking the case of the petitioner on the ground that the petitioner has made an application after 18 years after the death of the father. The respondents are harping on the Government order in G.O.Ms.No.120, Labour and Employment Department, dated 20.06.1999.

12. However, the learned counsel for the petitioner, drew the attention of this Court to the judgement reported in (2011 (7) MLJ 420) *State of Tamil Nadu rep. by its Secretary, Public Works Department, Chennai-9 Vs. Dilli Babu*.

13. The learned Judge of this Court has dealt in detail with reference to the Government Order in G.O.Ms.No.120, Labour and Employment Department, dated 20.06.1999. The learned Judge has observed in Paragraph 8 of the said order that the Labour and Employment Department by its subsequent government order has clarified that three years limitation for making an application is applicable, only in case of death of the government servant who died after 26.06.1995 and the above orders are not applicable to the past cases. Further, the Government has clarified that the age limit of 50 years for seeking appointment under the scheme, in the case of widows, is also applicable only to those widows who died on or after 26.06.1995. The relevant paragraph is extracted hereunder:

"In this connection, the District Collector, Tirunelveli Kattabomman District has sought for clarifications whether the time limit of three years period specified in the government order are applicable to the dependants of the Government Servants who died prior to the date of issue of the Government Order. In this connection, it is clarified that the time limit of three years period specified in the Government Order first cited is applicable only to the dependants of the Government Servants those who died while in service on or after 26.06.1995 and the above orders are not applicable to the past cases. Further the Government clarify, that the age limit of 50 years for appointment under the scheme in the case of widows as ordered in the said Government Order is also applicable only to the

widows of the Government Servants those who died on or after 26.06.1995.''

14. Admittedly, the petitioner has made an application on 27.07.2012 and on the same day, the petitioners three sisters have given no objection to the authorities. Hence, in my view, the petitioner is right in his contention that the impugned order of the second respondent rejecting the application of the petitioner on the ground that the application was belatedly made after three years is contrary to the said letter dated 11.10.1995 of the Labour and Employment of the Tamil Nadu Government. Furthermore, as rightly conducted by the learned counsel for the petitioner, the petitioner's mother made an application on 27.07.2012. In these circumstances, the respondents are not correct in stating that the petitioner made a belated application.

15. Therefore, the respondents are directed to consider the application of the petitioner dated 27.07.2012 and pass necessary orders granting appointment to the petitioner in accordance with his education qualification, within a period of eight weeks from the date of receipt of a copy of this order.

16. The writ petition is disposed of with the above direction. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Director of Elementary Education,
College Road,
Chennai-600 006.
2. The Chief Educational Officer,
Dharmapuri District,
Dharmapuri.
3. The District Elementary Educational Officer,
Dharmapuri District,
Dharmapuri.
4. The Assistant Elementary Educational Officer,
Nallampalli Panchayat Union,
Dharmapuri Taluk and District.

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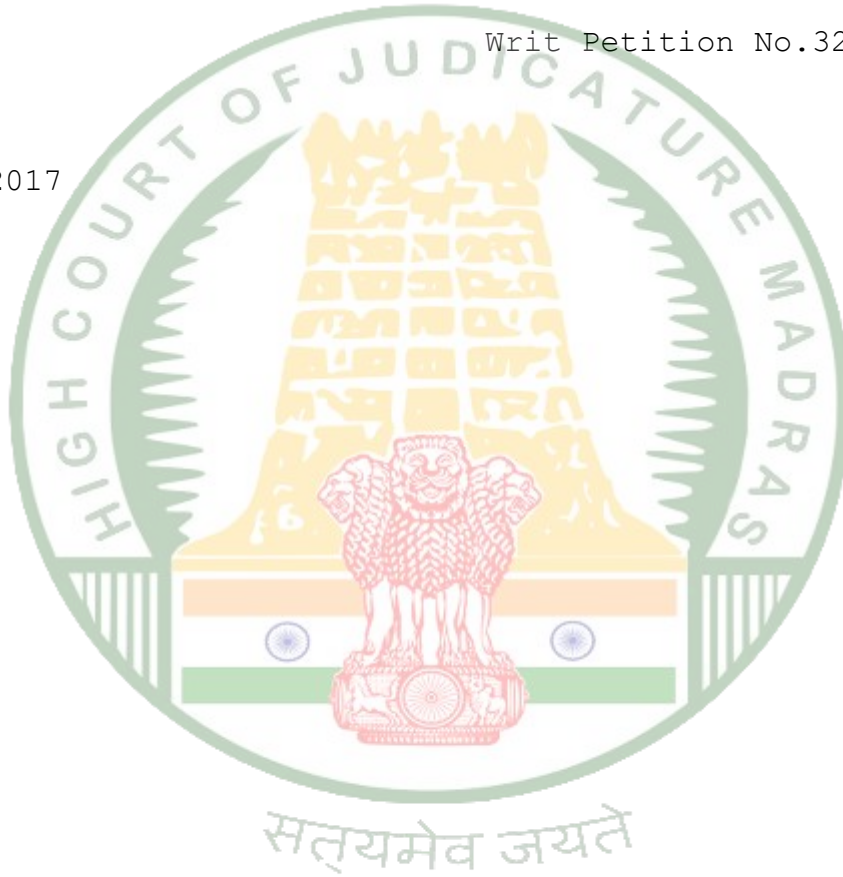
+1C.C. to MR.C.PRABAKARAN Advocate SR.NO.57233

+1 C.C. to The Government Pleader, High Court, Chennai-14
SR.NO. 57929

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SVI (CO)

VS 26.10.2017



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