

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

CORAM :

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

W.P.No.35364 of 2012
and
M.P.No.1 of 2014

V.Dhanasekaran

... Petitioner

Vs.

1. Government of Tamil Nadu
represented by the Secretary to Government,
Education Department,
Secretariat, Chennai-9.
2. The Director of School Education,
DPI Complex,
College Road,
Chennai-600 006.
3. The District Education Officer,
Tindivanam Taluk,
Villupuram District.
4. The Headmaster,
Government Higher Secondary School,
Atchipakkam, Villupuram District.
5. The Joint Commissioner,
Revenue, Chepauk,
Chennai - 600 005.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the respondents to appoint the petitioner to the post of Junior Assistant in the Education Department on compassionate grounds as per the clarification issued by the Joint Commissioner, Revenue in Na.Ka.Aku.4/63642/2011, dated 14.9.2012 with effect from the date on which the persons who were junior to the petitioner in the list maintained for compassionate grounds appointment were appointed with all consequential benefits including arrears of salary.

For Petitioner : M/s.Dakshayani Reddy

For Respondents : Mrs.K.Bhuvaneswari
Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of a writ of Mandamus to direct the respondents to appoint the petitioner to the post of Junior Assistant in the Education Department on compassionate grounds as per the clarification issued by the Joint Commissioner, Revenue in Na.Ka.Aku.4/63642/2011, dated 14.09.2012, with effect from the date on which the persons who were junior to the petitioner in the list maintained for compassionate grounds appointment were appointed with all consequential benefits, including arrears of salary.

2.The facts in a nutshell are as under: The petitioner's father, who was working as Physical Education Teacher in the fourth respondent school, passed away on 15.06.1995, leaving behind his wife, two sons and two daughters. Among the four children, the petitioner is the eldest. At the time of the death of his father, the petitioner was aged about 22 years and his educational qualification was 12th Standard.

3.The petitioner made an application on 09.02.1996 to the second and third respondents, through the fourth respondent, for seeking appointment on compassionate grounds, enclosing a certificate issued by the Tahsildar dated 18.12.1995 duly certifying that the family of the petitioner is in indigent circumstances, apart from enclosing a no objection certificate from other legal heirs. Subsequently, the Tahsildar issued another certificate on 14.08.2000 certifying that the income of the petitioner's family from agriculture was Rs.20,000/- per annum and the same was also reiterated by the Revenue Divisional Officer, Tindivanam, by proceedings dated 26.02.2001.

4. It is averred that despite such certification from the authorities concerned, the third respondent, by proceedings dated 15.10.2008, raised a query as to whether the petitioner was getting any income from a shop. This query was also answered by virtue of the proceedings of the Tahsildar dated 12.01.2009 to the effect that the petitioner was not receiving any income from the shop and their family continued to be in financial distress. Thereafter, the third respondent, by proceedings dated 02.03.2010, recommended for the appointment of the petitioner and accordingly, the name of the petitioner was included in the waiting list for appointment on compassionate grounds.

5.It is the case of the petitioner that persons similarly placed were granted appointment on compassionate ground in the year 2000/2001, whereas due to the ban imposed by the Government of Tamil Nadu during the period from 2001 to 2006, the consideration of the case of the petitioner was delayed and the same was again considered only in the year 2007.

6.It is the case of the petitioner that despite furnishing of all requisite documents and clarification from the Joint Commissioner, Revenue vide his proceedings No.Na.Ka.Aku.4/63642/2011, dated 14.09.2012, to the effect that the certificates issued by the Tahsildar are in the correct format and further action could be taken based on the same, till date the respondent authorities have not taken any steps to appoint the petitioner to the post of Junior Assistant, but are rather initiating steps to recruit candidates directly. In such factual backdrop, the present writ petition is filed.

7.In the counter affidavit filed on behalf of the respondents, it is stated that the request of the petitioner was rejected by proceedings dated 10.04.2007, as the certificate produced by the petitioner does not specify the existence of indigent circumstances. It was also stated that the petitioner and his brother were jointly running a private automobile shop and that the wife of the petitioner was working as a nurse. It is averred that the petitioner's brother was working as a driver in a travel agency. Based on these averments, it is pleaded that the writ petition should be dismissed, as the family of the petitioner is not in indigent circumstances.

8.I heard M/s.Dakshayani Reddy, learned counsel appearing for the petitioner and Mrs.K.Bhuvaneswari, learned Government Advocate, appearing for the respondents and perused the documents available on record.

9.Before advertng to the merits of the case, let us refer to the law relating to employment on compassionate grounds.

10.It is well established by catena of decisions of the Hon'ble Apex Court that the provision of appointment on compassionate ground is made to tide over the sudden crisis caused by the death of a bread winner, who leaves the family in penury without any means of livelihood, and that such a provision is really in the nature of an exception to the general principle of equality in the matter of recruitment.

11.In Sushma Gosain v. Union of India, (1989) 4 SCC 468, the Hon'ble Apex Court has observed that the cases related to the compassionate appointment have to be disposed of speedily and the relevant portion of the said decision reads as under:

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If then is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent 2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

(emphasis supplied)

12. In the case on hand, the petitioner has made an application within eight months from the date of death of his father. It is also not disputed that the third respondent, after satisfying himself, by proceedings dated 02.03.2010 had recommended for appointment of the writ petitioner on compassionate grounds. It is beyond any cavil that the Joint Commissioner, Revenue, vide proceedings dated 14.09.2012, had clarified that the certificate issued by the Tahsildar was in correct format as per the existing government orders and further added that action could be taken based upon such certificate.

13. The Revenue authorities, as stated supra, have issued certificates after satisfying themselves that the family of the petitioner is in indigent circumstances and their family is in distress. It is not the case of the respondents that the petitioner is not qualified for appointment. In fact, the third respondent (District Education Officer, Tindivanam Taluk) recommended appointment of the writ petitioner on compassionate grounds. Therefore, the averment in the counter affidavit that the District Educational Officer, Tindivanam, after spot visit, came to know that the petitioner and his brother are running a private automobile shop and that the petitioner's wife is working as a nurse, does not hold water.

14. The delay in considering the case of the petitioner was on account of the ban imposed by the Government between 2001 and 2006. That cannot be put against the petitioner. He made an application well within the stipulated time and nowhere the

respondents aver that the petitioner is not qualified for appointment. The repeated requests made by the respondent authorities to establish the indigent circumstances was, in fact, rightly established by the petitioner with certificates issued by various Revenue authorities. The veracity of the said certificates is not disputed by the respondent authorities.

15. The appointment on compassionate ground is an exception to the general rule of equality enshrined in Articles 14 and 16 of Constitution of India and the same should be granted only in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means. Compassionate employment has necessarily to be made in accordance with rules or executive instructions issued by the Government or public authority concerned and above all, such appointment should be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. Denial of appointment to dependent on compassionate ground on account of any ban imposed for fresh appointments would run counter to the intent of making appointment on compassionate ground, which is to tide over the immediate financial crisis.

16. In the instant case, the petitioner has made an application within the stipulated time. He is duly qualified and had established the indigent circumstances, as is evident from the proceedings of the Revenue authorities, referred supra. The delay on the part of the respondents to consider the case of the petitioner on account of ban cannot be put against the petitioner.

17. In the result:

(a) the writ petition is allowed by directing the respondents to appoint the petitioner to the post of Junior Assistant in the Education Department on compassionate grounds with effect from the date on which the persons who were junior to the petitioner in the list maintained for compassionate grounds appointment were appointed with all consequential benefits, including arrears of salary;

(b) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

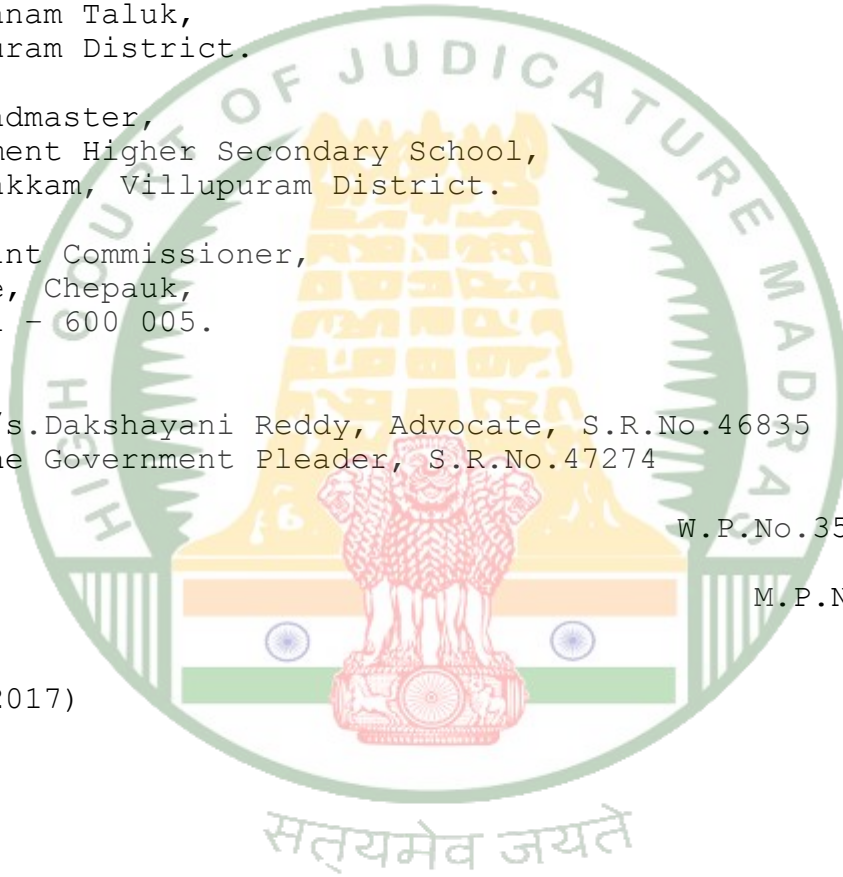
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5. The Joint Commissioner,
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+1cc to M/s.Dakshayani Reddy, Advocate, S.R.No.46835

+1cc to the Government Pleader, S.R.No.47274

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and
M.P.No.1 of 2014

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